Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1995

DIANN HARRIS CARTER, ET AL.,

Petitioners,

vs.

STANLEY MROZOWSKI, ET AL.,

Respondents

Petition for Writ of Certiorari to the Pennsylvania Supreme Court

---

PETITION FOR WRIT OF CERTIORARI

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50 pp

QUESTIONS PRESENTED

The imposition of heightened pleading standards by state courts to dismiss 42 U.S.C. §1983 claims that are properly and sufficiently plead under federal pleading standards denies the guaranteed federal rights remedied by 42 U.S.C. §1983.

LIST OF PARTIES

Diann Harris Carter, Joanna Foster, Joyce Waters, Gwendolyn Towles Manning, Deborah Alger, Frances Manning, Dr. Rosemary Madl, Marilyn R. Lovell, Cathy Consla, and Rodger L. Beatty,

Petitioners

Stanley Mrozowski, Ralph Moyer, Jeffrey Piccola, Gary Beese, John Thomas, Dahl Krow, Mark Barton, Larry Decker, Deborah Gantt, Patricia Bard, Wendy Minnix, Lynn Loomis, Sandy Reisinger, Kelly Dunlap, Irene Urban, Individually; Boswell, Snyder, Titner & Piccola, A Law Firm, Edgewater Psychiatric Center, Northwestern Corporation, Dauphin County Mental Health and Mental Retardation Case Management Unit and Dauphin County Mental Health and Mental Retardation Counselling, Private Corporations, and Dauphin County A Local Government,

Respondents

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DIANN HARRIS CARTER, ET AL.,

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STANLEY MROZOWSKI, ET AL.,

Respondents

Petition for Writ of Certiorari to the Pennsylvania Supreme Court

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PETITION FOR WRIT OF CERTIORARI

The petitioners, ten (10) individuals composed largely of Black women by and through their Attorney Don Bailey, respectfully request that a writ of certiorari issue to review the Order of the Pennsylvania Supreme Court for the Middle District entered November 16, 1995 which denied petitioners' Allowance of Appeal.

When suit was originally filed, the Third Circuit required heightened pleading standards for civil rights complaints. While this case was pending, this Court curtailed the Third Circuit's heightened pleading standards requirement in Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, ___ U.S. __ (1993), 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993) . The statute of limitations had run by the time Leatherman was decided, and plaintiff could not voluntarily dismiss the case and refile the action in the District Court. The time limit for removal had also passed.

Petitioners' 42 U.S.C. §1983 action was dismissed on the grounds that the complaint failed to state facts sufficient to constitute a cause of action under Pennsylvania's fact pleading standards. The complaint was clearly sufficient under the Federal Rules of Civil Procedure. It was also more than sufficient under Pennsylvania's own standards, state court opinion notwithstanding. Simply put, Pennsylvania's pleading standards were used to deny a valid 42 U.S.C. §1983 cause of action. Petitioners' were denied a federal substantive right simply because they chose to bring their civil rights action in a state forum. This denial of a federal right by a state, violates the Supremacy Clause and destroys the uniform application of 42 U.S.C. §1983 ie. federal law.

OPINIONS BELOW

On November 16, 1995, the Pennsylvania Supreme Court denied Petitioner's Allowance of Appeal from the June 2, 1995 order issued by the Commonwealth Court of Pennsylvania which upheld the lower court's May 10, 1995 decision granting a demurrer and dismissing petitioners' claim for relief under 42 U.S.C. §1983. The Common Pleas Court Memorandum and Order entered May 10, 1995 granting respondents' demurrer and dismissing petitioners' claim pursuant to Pa. R. Civ. P.1028 is attached hereto and marked Appendix C. The Commonwealth Court Memorandum and Order which upheld the lower court's decision was entered June 2, 1995 and is attached hereto and marked Appendix B. The Pennsylvania Supreme Court's denial of Allowance of Appeal entered November 16, 1995 is attached hereto and marked Appendix A.

STATEMENT OF JURISDICTION

The judgement of the Commonwealth Court of Pennsylvania (App. B) was entered June 2, 1995. The Order of the Pennsylvania Supreme Court denying an allowance of appeal was entered November 16, 1995 (App. A). The jurisdiction of this Court is based on Rule 10.1(b) of the Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Article III, Section I of the United States Constitution:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article VI Section I of the United States Constitution:

The Supremacy Clause

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made,or which shall be made, under the Authority of the United States,

> shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

STATEMENT OF THE CASE

Petitioners are ten (10) individuals composed largely of Black women who were all managers at the Rosalie G. Handler Center, a now de-funct non-profit corporation providing those in need with mental health care. All were managers who performed a variety of services at the Rosalie G. Handler Center including counseling and caring for the ill.

There are twenty-one (21) respondents consisting of government officials, a group of staff workers at the Rosalie G. Handler Center who had been placed there by these same government officials, private corporations and Dauphin County, a local Pennsylvania government entity.

The petitioners were eminently qualified and were performing their duties in an exceptional manner at the Center when they suddenly found themselves being accused of crime, gross mismanagement and incompetence.

Petitioners without any investigation whatsoever were all abruptly removed from their jobs and their employer, the Rosalie G. Handler Center, was dissolved. The Center was taken over by Dauphin County and the Center's highly desirable outpatient business was given to

the private corporate respondents who desired the Center's CON (Certificate of Need).

Purported statements which alleged criminal misconduct were waved around the floor of the Pennsylvania State House of Representatives by Respondent, Jeffrey Piccola, a member of the legislature. Piccola also made public statements outside the House Chamber to reporters about the petitioners while brandishing the statements given by respondents Gautt, Bard, Minnix, Loomis, Resinger, Dunlap, and Urban. These statements were procured by and through Piccola's law firm which is also a respondent.

The petitioners were publicly ridiculed and defamed, they were forcibly removed from their jobs and their careers and credentials were adversely affected. The accusations were never investigated or pursued. Factual evidence exists to indicate the firings were on account of race and also sexual orientation in certain cases.

Petitioners brought a civil action under federal and state law in state court. Petitioners in various combinations sued in state court under federal civil rights statutes and also under state claims for defamation, wrongful discharge and under a Harrisburg, Pennsylvania ordinance prohibiting discrimination based upon sexual orientation in certain cases. Petitioners claim the accusations were false and were used by respondents as part of an unlawful scheme to dissolve the Rosalie G. Handler Center in order to give the private corporate respondents the lucrative outpatient business and so that Dauphin County could meet thresholds for receiving federal money from the United States for mental health grants.

Procedurally this case began when petitioners filed their Civil Rights Complaint with the Dauphin County Court of Common Pleas in Harrisburg, Pennsylvania. The court granted respondents' demurrer and permitted petitioners to amend their Complaint. Petitioners amended their Complaint. The Court again granted a demurrer and dismissed the Complaint with prejudice because it claimed the pleading defects could not be cured.

Petitioners appealed the dismissal to the Commonwealth Court of Pennsylvania which upheld the lower court decision. Petitioners even filed an allowance of appeal with the Pennsylvania Supreme Court and were denied.

REASONS FOR GRANTING THE WRIT

I.

THE IMPOSITION OF HEIGHTENED PLEADING STANDARDS BY STATE COURTS TO DISMISS 42 U.S.C. §1983 CLAIMS THAT ARE PROPERLY AND SUFFICIENTLY PLEAD UNDER FEDERAL PLEADING STANDARDS DENIES THE GUARANTEED FEDERAL RIGHTS REMEDIED BY 42 U.S.C. §1983.

The application of stricter pleading standards by states is outcome-determinative and violative of the Supremacy Clause. Heightened state pleading rules which act to defeat viable civil rights claims because of the choice of forum is inconsistent with the intent and purpose of 42

U.S.C. § 1983 and defeats uniformity in enforcing the federal civil rights acts and causes forum shopping.

This Court has held that states may establish the rules of procedure governing litigation in their own courts, however where state courts entertain a federally created cause of action, the "federal right cannot be defeated by the forms of local practice". Brown v. Western R. Co. of Alabama, 338 U.S. 294, 296, 70 S.Ct. 105, 106, 94 L.Ed. 100 (1949).

It is clear in Brown, that local rules of pleading can constitute unlawful substantive limitations on a federal statutory right. As Justice Holmes stated in Davis v. Wechsler, 263 U.S. 22, 44 S. Ct. 13, 68 L. Ed. 143 (1923), cited in Brown at 299,

> "Whatsoever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights when plainly and reasonably made is not defeated under the name of local practice. Id.

While the Supreme Court has applied the rule of Brown to FELA (Federal Employer Liability Act) cases and other types of federal claims brought in state court, the Supreme Court has never passed on whether this rule also applies to a 42 U.S.C. §1983 action. Certiorari was granted in Brown because "the implications of the dismissal were considered important to a correct and uniform application of the federal act in the state and federal courts". Id. 338 U.S. 295. Given the broad

remedial nature of 42 U.S.C. §1983 and the proclivity for allowing liberal pleading practices in federal courts, it would be anomalous to require a different standard for 42 U.S.C. §1983 actions. The critical issue is whether state pleading standards overly burden federal rights guaranteed to U.S. citizens. Pennsylvania's rules do not merely regulate the housekeeping aspects of pleading. Instead, (or at least in this case) they required a much higher threshold of fact pleading than that required by federal law. By so doing, they have acted to bar and inhibit the bringing of 42 U.S.C. §1983 actions in state courts generally. Thus although Pennsylvania provided sufficient procedural due process, her pleading standards have denied a federal citizen's rights of access to our unified judicial system. Where these rules burden 42 U.S.C. §1983 litigation, or are not consistent with the purposes of 42 U.S.C. §1983, they must be rejected.

In Brown, a Georgia trial Court sustained a general demurrer to a complaint brought under the FELA. A Georgia rule of practice required that pleadings must be construed most strongly against the pleader. The Court held that under federal law the facts alleged in the Complaint supported the inferences of negligence and that the issue should go to the jury.

Where state rules "dig into substantive rights" or are used to "impose unnecessary burdens upon rights of recovery authorized by federal law, they will be overridden. Id 338 U.S. 296.

Brown also makes it clear that the U.S. Supreme Court is the ultimate arbiter of the sufficiency of state court pleadings in a federal statutory action. The Court concluded that it was the duty of the Supreme Court "to

construe the allegations of the complaint ourselves in order to determine whether petitioner has been denied a right to trial granted him by Congress". The issue is clear - federal rights cannot be defeated by forms of local practice. "And we cannot accept as final a state court's interpretation of allegations asserting it". Id. 338 U.S. 296.

Heightened state pleading standards which act to bar and inhibit viable 42 U.S.C. § 1983 claims should be held violative of the Supremacy Clause. In analyzing converse-Erie issues, this Court has always considered Congress' intent and whether the state rule in question is consistent with the broad remedial goals of the federal civil rights laws or does the application stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Where a state rule is inconsistent, it must be pre-empted.

This Court has consistently found that federal standards should prevail in converse-Erie 42 U.S.C. §1983 cases where federal and state rules conflict. SEE: generally Martinez v. California, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980). (State immunity rules cannot be applied to defeat §1983 claims), Maine v. Thibolout, 448 U.S. 1, 100 S.Ct. 2502, 65 L. Ed. 2d 555 (state attorney fee rules cannot defeat 42 U.S.C. §1988), Felder v. Casey, 487 U.S. 130,108 S. Ct. 2302, 101 L. Ed. 2d 123 (1988) (state notice of suit rule for civil rights complaint burdens federal right to bring §1983 action). Most of this Court's decisions dealing with converse-Erie problems favor a uniform system for addressing federal rights in state courts and for parity between state and federal courts where there is concurrent jurisdiction.

This Court, in Felder held that where the application of a state rule was outcome determinative of a federal right, the state rule must be pre-empted. Heightened state pleading standards are more than simple procedural rules, the standards can completely deny a 42 U.S.C. §1983 claim brought in state court. Unless a claimant can provide sufficient facts to meet the state's pleading requirement, an otherwise viable 42 U.S.C. § 1983 claim is annihilated. Pennsylvania may not alter the outcome of federal claims by demanding compliance with its outcome-determinative rules.

Simply put, Pennsylvania is saying that her pleading standards and practices need not respect the standards and practice of federal law which guarantees a citizen's federal rights even when Pennsylvania is applying federal law.

This Court has established that in order to maintain a 42 U.S.C. §1983 action, a plaintiff must demonstrate a violation of a federally protected constitutional right and that the violation occurred by state action or under color of state law. Adickes v. S.H. Kress & Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed. 2d 142, 150 (1970). Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, L. Ed. 2d 80 (1957).

Fed. R. Civ. P. 8(a) only requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief. Most states have adopted pleading rules patterned after the federal rules and do not subject 42 U.S.C. §1983 actions to strict pleading standards.

In order to dismiss a complaint under Fed. R. Civ.

P. 12(b)(6), the controlling standard is that an action may be dismissed for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of a claim for which relief could be granted. Further, pleadings are insufficient to state a claim under 42 U.S.C. §1983 if the allegations are mere conclusory statements. For purposes of Fed. R. Civ. P. 12(b)(6), the allegations of the complaint are taken as true. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

The U.S. Supreme Court recently in Leatherman v. Tarrant County, __ U.S. __ (1993), 113 S.Ct. 1160, 122 L. Ed. 2d 517 (1993) invalidated heightened pleading standards for civil rights cases in federal courts. In Leatherman the Supreme Court held that civil rights causes of action need only be pled according to Fed. R. Civ. P. 8(a) notice pleading standards. It is clear from Leatherman that the Supreme Court has no interest in applying pleading standards which unreasonably restricts a plaintiff from pursuing a 42 U.S.C. §1983 action.

When this case was originally brought, the District Court for the Middle District of Pennsylvania and the Third Circuit Court of Appeals required heightened pleading standards for civil rights actions which were more similar to Pennsylvania's current fact pleading standards. While the case was pending, Leatherman was decided which curtailed heightened pleading standards for civil rights complaints.

Even under pre-Leatherman standards, the state court improperly dismissed petitioners' 42 U.S.C. §1983 claims. This Court's holdings in Brown and in Leatherman were brought in briefs and oral arguments to

the attention of all of the Pennsylvania Courts deciding this matter. Each and every Pennsylvania court that addressed this case refused to acknowledge the holdings in Brown and Leatherman.

This is evidenced by the fact that none of the Pennsylvania courts even mentioned one word about Brown or Leatherman.

Clearly, Pennsylvania courts do not want to hear civil rights cases even though they have concurrent jurisdiction and are obligated to do so.

By the time Leatherman was decided, the statute of limitations had run and it was too late to voluntarily dismiss the claim and refile it in federal court. Petitioners were stuck with a forum which now denied their 42 U.S.C. §1983 claim simply because of the choice of forum. Any argument that the requirements are designed to sift-out "specious claims" is inconsistent with the aims of 42 U.S.C. §1983 and invalidated by Leatherman. A state requirement that predictably alters the outcome of 42 U.S.C. §1983 claims depending on where the claim is brought is inconsistent with the federal interest in intrastate uniformity.

The use of substantive state pleading standards to dismiss viable 42 U.S.C. §1983 claims that comport with Adickes and Leatherman conflicts with the remedial objectives of 42 U.S.C. §1983 and denies U.S. citizens their rights of access to state courts. The sweep of 42 U.S.C. §1983 is to be granted as broad a sweep as its language. Petitioners are forced to plead specific details in Pennsylvania far beyond those they would have to plead if in a federal court. To make matters worse, their federal claim is dismissed without the benefit of any discovery.

Civil rights cases are typically the most difficult cases to plead because there are generally no "smoking guns" and the actions taken are secretive and covert. Secondly, almost all information is in the exclusive control and possession of defendants. The same was true below. 42 U.S.C. § 1983 cases allow liberal pleading standards precisely to achieve the intended remedial purpose of the act. If, after discovery is completed, insufficient facts exist, then the action can be dismissed. Pennsylvania's fact pleading standards require such extreme specificity under the holding in this case that Pennsylvania civil rights victims will be denied the opportunity to bring §1983 actions in Pennsylvania state courts.

Therefore, because these state standards conflict with and burdens a U.S. citizen's substantive federal rights to enjoy access to state courts they are preempted by the Supremacy Clause.

The purpose underlying 42 U.S.C. § 1983 is to serve as an antidote to discriminatory state laws, to protect federal rights where state law is inadequate in cases where processes are available in theory but not in practice. These rights may not be frustrated by state substantive limitations couched in procedural language.

This is a highly political case. It involves elected officials and their supporters. It should be heard. "The central objective of the Reconstructionist Era civil rights statutes .... is to ensure that individuals whose federal constitutional rights are abridged may recover damages or secure injunctive relief". Burnett v. Grattan, 468 U.S. 42, 55, 104 S.Ct. 2924, 2932, 82 L.Ed. 2d 36 (1984). §1983 provides "a uniquely federal remedy against incursions ..... upon rights secured by the Constitution and laws of

the Nation," Mitchum v. Foster, 407 U.S. 225, 239, 92 S.Ct. 2151, 2160, 32 L.Ed. 2d 705 (1972) and is to be accorded "a sweep as broad as its language." United States v. Price, 338 U.S. 787, 801, 86 S.Ct. 1152, 1160, 16 L.Ed. 2d 267 (1966).

Congress surely did not intend to assign to state courts and state legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action. Yet this is precisely the consequences. States may no more condition the federal right to recover on their pleading standards than bar the right outright. A state rule which acts to bar 42 U.S.C. § 1983 claims brought in state courts is inconsistent with the right of access to state courts and the broad remedial purpose of the statute

A law that predictably alters the outcome of 42 U.S.C. §1983 claims depending on whether the claim is brought in state or federal court within the same state is obviously inconsistent with the federal interest in intrastate uniformity. Pennsylvania applies its state fact pleading standards to determine whether a complaint pleads a cause of action under 42 U.S.C. §1983 sufficient to survive a general demurrer. Pennsylvania's demurrer is the federal equivalent of Fed. R. Civ. P. 12(b).

The Court in Brown stated it would not "fail to protect federally created rights from dismissal because of over-exacting local requirements for meticulous pleadings. Id. 338 U.S. 299.

State courts have concurrent jurisdiction to adjudicate suits brought under the federal Civil Rights Act, 42 U.S.C. §1983. Maine v. Thiboutot, 448 U.S. 1, 3, 100 S.Ct. 2502, 65 L. Ed. 2d 555, 558. Since civil rights actions

under 42 U.S.C. §1983 are based upon federal statutory law, state courts are required to apply the substantive federal law to determine and define the cause of action. Just as federal courts are constitutionally obligated to apply state law to state claims, Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), so too the Supremacy Clause imposes on state courts a constitutional duty "to proceed in such manner that all the substantial rights of the parties under controlling federal law are protected". Garrett v. Moore-McCormack, Co., 317 U.S. 239, 245 , 63 S.Ct. 246, 251, 87 L.Ed. 239 (1942).

The converse-Erie question raised is whether the state or federal law should apply to determine whether a plaintiff has filed a complaint that adequately alleges the wrongful conduct giving rise to a cause of action or claim for relief under 42 U.S.C. §1983. 42 U.S.C. § 1983 makes no reference to state procedure and contains no express provision that requires that federal law should be applied to test the adequacy of complaints filed in state court under 42 U.S.C. §1983.

The application of federal standards to determine whether a 42 U.S.C. §1983 complaint filed in state court, should survive a general demurrer (the federal equivalent of Fed. R. Civ. P. 12(b) will encourage desirable uniformity in the adjudication of federally created rights.

Based upon Felder v. Casey and Brown v. Wester R. of Alabama, strict pleading standards which are applied to dismiss a 42 U.S.C. §1983 cause of action which was sufficiently plead under federal standards violates the intent and purpose of 42 U.S.C. §1983 and should therefore be pre-empted. To hold otherwise, would

destroy the trend towards a unified system and encourage forum shopping in Pennsylvania and discourage the use of the Pennsylvania state courts in redressing 42 U.S.C. §1983 violations.

If this case had been brought in a federal court, petitioners would only have to meet a notice pleading standard to avoid dismissal. Petitioners meet that standard, however they are put out of Court by strict state fact pleading standards. In effect, they are denied a federal cause of action, simply because they chose to bring their federal claim in a state forum.

There is a more universal issue here: U.S. citizens should not be forced to go to a federal district court to get a hearing on their civil rights claims based upon where they live. To be forced to do so is a denial of the equal and fundamental justice that American citizens are entitled to.

United States District Courts sit in large districts and often civil rights victims live great distances from the nearest federal court. These people should be able to go to their local state courts to redress violations of their civil rights. Why should the citizens of Pennsylvania be afraid to go to their courthouses to enjoy the benefits of our Constitution and its Amendments?

CONCLUSION

Pennsylvania's use of strict state pleading standards to dismiss 42 U.S.C. §1983 claims properly plead under federal standards overburdens a federal substantive right in violation of the Supremacy Clause and defeats uniformity in enforcing federal civil rights acts.

Petitioners therefore request that this Honorable Court issue a Writ of Certiorari.

Respectfully submitted,

DON BAILEY
Counsel of Record
Attorney for Petitioners

APPENDIX A - ORDER DENYING PETITION FOR ALLOWANCE OF APPEAL DENIED OF COMMONWEALTH COURT FILED ON

JUNE 2, 1995

IN THE SUPREME COURT OF PENNSYLVANIA
FOR THE MIDDLE DISTRICT

CIVIL ACTION

NO. 339 M.D. ALLOCATUR DOCKET, 1995

DIANN HARRIS CARTER, ET AL.,

Petitioner,

v.

STANLEY MROZOWSKI, ET AL.,

Respondent

ORDER

PER CURIAM:

AND NOW, this 16th day of November, 1995, the Petition for Allowance of Appeal is denied.

Mr. Justice Montemuro is sitting by designation as a senior judge as provided by Rule of Judicial Administration 701(f).

BY THE COURT:

APPENDIX B - DECISION OF COMMONWEALTH COURT OF PENNSYLVANIA FILED JUNE 2, 1995

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CIVIL ACTION

NO. 1592 C.D. 1994

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWELS MANNING, ET AL.,

Appellants

v.

STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, ET AL.

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE RODGERS FILED: June 2, 1995

Appellants, ten former employees of the Rosalie G. Handler Center (Handler Center), appeal from the May 10, 1994 order of the Court of Common Pleas of Dauphin County (trial court) which granted preliminary objections in the nature of a demurrer filed by the defendants in this matter and dismissed appellants' second amended

complaint[1] with prejudice. We affirm.

Appellants filed a fifteen-count complaint against the defendants, alleging violations of their civil rights, defamation, civil conspiracy to defame, wrongful discharge and violation of a local ordinance. On September 20, 1993, the trial court granted the defendants' demurrers to the first amended complaint on the grounds that appellants failed to plead the specific facts necessary to state any cause of action.[2] The trial court's extensive opinion reviewed the complaint in detail and set forth the requirements and deficiencies as to each claim.

Appellants filed a thirteen-count second amended complaint, again asserting violations of their civil rights, civil conspiracy, defamation, wrongful discharge and, for the first time, violations of rights protected by the Pennsylvania Constitution. The second amended complaint was found to be similarly deficient by the trial court. In a twenty-five page opinion, The Honorable Todd A. Hoover illustrates appellants' failure to successfully cure the defects previously identified by the trial court in addressing the first amended complaint.

On appeal to this Court,[3] appellants argue that their

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[1]The original complaint was first amended to drop one of the named plaintiffs from the action.

[2]The opinion of the Honorable Joseph H. Kleinfelter in Carter, et al. v. Mrozowski, et al., 113 Dauph. 431 (C.P.Pa. 1993) sets forth a thorough recitation of the facts and description of the parties that we conclude are not necessary to reiterate here.

[3]Our scope of review of preliminary objections in the nature of a demurrer is limited to determining whether on the facts alleged the law states with certainty that no recovery is possible. Hawks by Hawks v. Livermore, 157 Pa. Commonwealth Ct. 243, 629 A.2d 270 (1993). We must accept

second amended complaint sufficiently pleads their causes of action and that the trial court erred in applying the pleading requirement under the Pennsylvania Rules of Civil Procedure to causes of action brought under federal law.

We first address appellants' argument that the second amended complaint meets the "notice pleading" requirements under the Federal Rules of Civil Procedure and that the trial court's application of the more strict pleading requirements of the state rules of civil procedure frustrates the intent and purpose of federal law. It is well settled that the Federal Rules of Civil Procedure only apply to federal district courts, Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826 (1989) (Kennedy, J., dissenting), and cannot be applied to practice or procedure in state courts, nor affect the rights of parties in those courts. Rader v. Baltimore & Ohio Railroad Co., 108 F.2d 980 (7th Cir. 1940), cert denied, 309 U.S. 682 91940).

Appellants contend, alternatively, that the second amended complaint satisfies the pleading requirements under the Pennsylvania Rules of Civil Procedure. Pa. R.C.P. No. 1019 requires that a complaint state the material facts on which a cause of action is based. Appellants argue that the trial court ignored the significant changes they have made in their second amended complaint, but fail to indicate any of the facts allegedly included therein to support this assertion. After careful review of the second amended complaint, we concur with the conclusions reached by the trial court, which are briefly summarized as follows.

Count I of the second amended complaint addresses alleged deprivations under 42 U.S.C. §1983. Appellants allege no facts reflecting that the actions of which they complain constituted a policy, practice or custom of the municipality, or

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as true all well pled allegations and material facts averred in the complaint as well as inferences reasonably deducible therefrom; any doubt should be resolved in favor or overruling the demurrer. Id.

demonstrating how the defendants' actions were under color of state law, or supporting the existence of a protected right under the equal protection or due process clauses of the Fourteenth Amendment. See Long v. Board of Education of the City of Philadelphia, 812 F.Supp. 525 (E.D. Pa. 1993), aff'd, 8 F.3d 811 (3d Cir. 1993).

Amended Count II addresses appellants' claims under 42 U.S.C. §1985. Here, appellants fail to set forth detailed facts regarding the manner in which the defendants conspired to interfere with the administration of justice in state court and the private enjoyment of equal protection under the laws. See Fuller v. Harding, 699 F.Supp. 64 (E.D. Pa. 1988), aff'd, 875 F.2d 310 (3d Cir. 1989).

In amended Count III, appellants aver that the defendants unlawfully agreed to defame appellants and maliciously and wrongfully deprive them of their jobs and unlawfully discriminate against them. As a rule, conspiracy must be pleaded with specificity. See Hammond v. Creative Financial Planning Organization, Inc., 800 F.Supp. 1244 (E.D. Pa. 1992). The second amended complaint contains no averments as to who agreed with whom, when the agreement became apparent, or even the specific unlawful actions allegedly taken. See Smith v. Wagner, 403 Pa. Superior Ct. 316, 588 A.2d 1308 (1991).

The next eight counts of the second amended complaint address appellants' defamation claim. Despite clear direction from the trial court in the September 20, 1993 opinion, appellants again fail to identify the words or subjects of the allegedly defamatory statements, when and where broadcasts occurred or newspaper statements appeared, or to allege facts regarding the recipients' understanding of the communications. See Moses v. McWilliams, 379 Pa. Superior Ct. 150, 549 A.2d 950 (1988), petitions for allowance of appeal denied, 521 Pa. 630, 558 A.2d 532 and 521 Pa. 631, 558 A.2d 532 (1989). In addition, appellants have not provided copies of statements allegedly printed in the newspaper as required

by Pa. R.C.P. No. 1019 (h).

With respect to appellants' claim for wrongful discharge, contained in Count XII of the second amended complaint, appellants failed to rectify the absence of factual averments that appellants had employment they wished to keep and that they were terminated by their employer in violation of a contract or settled public policy. See Veno v. Meredith, 357 Pa. Superior Ct. 85, 515 A.2d 571 91986), petition for allowance of appeal denied, 532 Pa. 665, 616 A.2d 985 91992).

In Count XIII of the second amended complaint, appellants assert a separate cause of action for the violation of rights protected under Article I of the Pennsylvania Constitution. Here, appellants allege no specific facts to demonstrate that appellants were penalized for the exercise of a constitutionally protected freedom or that they lost their jobs because they were of a particular sex, see Fischer v. Department of Public Welfare, 509 Pa. 293, 502 A.2d 114 (1985), nor do they cite law identifying homosexuals as a suspect class or a protected class under the state's equal rights amendment. See Doe v. Sparks, 733 F. Supp. 227 (W.D. Pa. 1990).

The trial court also granted demurrers which challenged whether a cause of action has been stated against particular named defendants and concluded that appellants have failed to state a cause of action under each of their thirteen counts. The trial court further concluded that appellants' inability to incorporate the court's earlier directives in amending their complaint does not bode well for any future efforts. We agree with the trial court's conclusion that it clearly appears that an additional attempt by appellants to cure the defects in their complaint would be futile. See Framlau Corp. v. County of Delaware, 223 Pa. Superior Ct. 272, 299 A.2d 335 (1972). Where, as here, it appears that adjective complaint cannot be cured by amendment, preliminary objections in the nature of a demurrer may be sustained and the complaint dismissed

without further leave to amend. Philmar Mid-Atlantic v. York Street Associates, 389 Pa. Superior Ct. 297, 566 A.2d 1253 (1989).

Accordingly, the trial court's order granting the defendants' preliminary objections in the nature of a demurrer and dismissing appellants' complaint with prejudice is affirmed.

APPENDIX C - COURT OF COMMON PLEAS OPINION AND ORDER FILED MAY 10, 1994

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

CIVIL ACTION

NO. 1592 C.D. 1994

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWELS MANNING, ET AL.,

Appellants

v.

STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, ET AL.

ORDER

NOW, June 2, 1995, the order of the Court of Common Pleas of Dauphin County, at No. 92-S-2271, dated May 10, 1994, is affirmed.

BY THE COURT:

s /

Samuel L. Rodgers

SAMUEL L. RODGERS, J.

BEFORE TURGEON, KLEINFELTER, and HOOVER, JJ.

OPINION

This matter comes before the court on defendants' preliminary objections to plaintiffs' Second Amended Complaint. The action arises form Dauphin County's decision not to renew its contract with the Rosalie G. Handler Center, a mental health and mental retardation provider.

The Second Amended Complaint was brought in response to an Opinion and Order [hereinafter "Opinion"] of September 20, 1993, of the Honorable Joseph H. Kleinfelter.[1] That Opinion addressed defendants' preliminary objections to the first Amended Complaint. The court granted demurrers to all counts with leave to amend all but those alleging violations of 3 U.S.C. section 1981.

We must now consider whether the Second Amended Complaint succeeds in complying with the requirements set forth in the Opinion of September 20, 1993 so as to state causes of action sufficient to survive defendants' demurrers. Upon consideration of the September 20, 1993 Opinion and the Second Amended Complaint, it is the opinion of this court that plaintiffs have failed to state causes of action under any of their thirteen counts. Defendants' demurrers are granted and the Second Amended Complaint is dismissed with prejudice.

We refer to Judge Kleinfelter's earlier Opinion for a thorough recitation of the facts and description of the parties.

Plaintiffs' Second Amended Complaint consists of thirteen counts. In considering whether the Second Amended Complaint successfully cures the defects previously identified by this court in the first Amended Complaint, we address the following issues raised by plaintiffs: (1) whether plaintiffs state a cause of action for deprivation of their civil rights pursuant to 42 U.S.C. section 1983 or 42 U.S.C. section 1985 (Counts I and II); (2) whether a cause of action for civil conspiracy has been stated (Count III); (3) whether the

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[1]Carter, et al. v. Mrozowski, et al., 431 Dauph. 431 (1993).

complaint states a cause of action for defamation (Counts IV through XI); (4) whether a cause of action for wrongful discharge has been set forth (Count XII); and (5) whether the complaint states a cause of action for violation of rights protected by the Pennsylvania Constitution (Count XIII). As a final matter, we address additional demurrers which challenge whether a cause of action has been stated against particular named defendants.

Beginning with the standard for a demurrer, we:

> The standards for sustaining preliminary objections in the nature of a demurrer are quite strict. A demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but no conclusions of law. . . . In order to sustain the demurrer, it is essential that plaintiff's complaint indicate on its face that his claim cannot be sustained, and the law will not permit recovery. . . . If there is any doubt, this should be resolved in favor of overruling the demurrer.[2]

We turn, the, to a consideration of plaintiffs' allegations of fact,setting aside as we must the numerous conclusory statements, unsupported inferences, expressions of opinion, and argumentative averments included in the complaint.

We first address the claim under 42 U.S.C. section 1983. This court previously set forth the text of the statute as well as the requirements for stating a cause of action thereunder. We refer to the Opinion for these purposes.

Count I addresses alleged deprivations under 42 U.S.C. section 1983. The essence of this allegation is that the

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[2]Gekas v. Shapp, 469 Pa. 1, 364 A. 2d 691, 693 (1976).

defendants, in their various capacities as agents of the state, through their unlawful actions in dissolving Handler Center, deprived plaintiffs of their constitutionally protected rights to due process and equal protection of the law. To state a claim under section 1983 against a municipality, plaintiffs are required to plead that the actions of which they complain constituted a policy, practice, or custom of the municipality or the actions of defendants were "under color of state law," and that there exists an entitlement to federal protection under the equal protection or due process clauses of the Fourteenth Amendment.[3]

Absent a showing of the close nexus between the state and the challenged action, the state will beheld responsible for a private decision only when it has exercised coercive power or has provided significant encouragement, covert or overt, so as to conclude the action was the directive of the state. Mere approval or acquiescence in the initiatives of a private party is not sufficient to justify holding the state responsible for those initiatives under the terms of the Fourteenth Amendment.[4] It is crucial that the facts describe conduct of defendants that is proscribed by federal law.

In applying this analysis to plaintiffs' first claim for relief under section 1983, Judge Kleinfelter found a failure to allege a policy, custom, or practice violative of any civil right or that an official with final authority to act on behalf of any of the defendants enacted such a policy.[5] Finding that plaintiffs failed to meet the threshold requirement, the

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[3]Opinion at 434; Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981); Long v. Board of Education of the City of Philadelphia, 812 F. Supp. 525 (E.D. Pa. 1993); White v. Moses Taylor Hospital, 763 F. Supp. 776, 786 (1991).

[4]White, 763 F. Supp. at 788.

[5]Opinion at 435.

Opinion further cautions plaintiffs that there are insufficient allegations to establish an act "under color of state law" or the existence of a protected right.[6]

Turning to paragraphs 99 through 103 which purport to set forth an amended cause of action for section 1983 violations, we find that the changes found in paragraphs 100, 102, and 103 do not represent additional facts supportive of the claim. Rather, the complaint states legal conclusions by way of adding the words "state power" and "under color of state law" provided by the court in its Opinion without the facts to demonstrate how the defendants were operating in this capacity.

We find plaintiffs have failed to articulate a claim for which relief can be granted under section 1983 through an absence of facts setting forth a policy, practice, or custom of the state, or allegations as to how any of the actions of any of the defendants were under color of state law and directly led to the deprivation of federally protected rights. We conclude that there could be no recovery under section 1983, even accepting as true every well-pleaded,material fact set forth by plaintiffs.

With respect to the claim for relief under 42 U.S.C. section 1985, this court previously found that the Complaint failed to set forth a "detailed factual pleading" with respect to the manner in which defendants conspired to interfere with the administration of justice in state court and the private enjoyment of equal protection under the laws.[7] Again, we refer to the Opinion for the text of the statute and interpretive case law.

The amended Cont II leads us to conclude in the first instance that the only change made to the original section

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[6]Opinion at 435.

[7]Opinion at 436, citing Fuller v. Harding, 699 Supp. 64 (E.D. Pa. 1988), affirmed 875 F. 2d 310 (3rd Cir. 1989).

1985 claim is to paragraph 106.[8] Secondly, a "detailed factual pleading" is clearly lacking, giving way to "broad and conclusory allegations" deemed insufficient to support a section 1985 claim.[9] The complaint does not set forth a sustainable section 1985 claim failing as it does to aver with specificity a conspiracy among defendants for the purpose of depriving a clearly defined class of persons equal protection of the laws.

Our next inquiry is the sufficiency of plaintiffs' allegations of civil conspiracy. A cause of action for civil conspiracy requires 1) the combination of two or more persons acting with a common purpose to do an unlawful act or a lawful act by unlawful means or for an unlawful purpose; 2) an overt act done in pursuance of a common purpose; and 3) actual legal damage.[10]

Count III avers that defendants unlawfully agreed to defame plaintiffs and maliciously and wrongfully deprive them of their jobs, and unlawfully discriminate against them. Nowhere in this two-paragraph claim are the facts to support these unmistakable conclusions of law. While it is not necessary to aver specifically the time, place, date of conspiratorial meeting, or the precise date on which the conspiracy was entered, facts must be alleged to at least support the inference of the combination and its intent.[11]

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[8]Plaintiffs add the words "by creating a false set of facts for a court hearing, caused injury to plaintiffs' careers, and replace them at their jobs' to the original complaint.

[9]Fuller, supra.

[10]Smith v. Wagner, 403 Pa. Super. 316, 588 A. 2d 1308, 1311-12(1991).

[11]Smith, 588 A. 2d at 1312. See also, Ersek v. Township of Springfield, Delaware County, 822 F. Supp. 218 (E.D. Pa. 1993).

We are still without averments as to who agreed with whom, when the agreement first became apparent, and the specific unlawful actions taken. we repeat what was previously cited: "As a rule, conspiracy must be pleaded with specificity."[12] This count, identical to paragraphs 111 and 112 of the first Amended Complaint, presents no facts to support the claim.

The next nine counts of the Second Amended Complaint attempt to set forth a cause of action for defamation. Once again, to state a cause of action for defamation the complaint must, on its face, allege 1) the defamatory character of the communication; 2) its publication by the defendant; 3) the communications' reference to the plaintiff; 4) the recipient's understanding of the defamatory character of the communication and its application to the plaintiff; and 5) injury resulting from the publication.[13] On its face, the complaint must identify specifically what allegedly defamatory statements were made, and to whom they were made.[14] We are again presented with vague inferences of allegedly objectionable communications.

The defamation counts in the first Amended Complaint were dismissed by this court because they failed "to identify the words or subjects of the alleged defamatory statements, the persons to whom these statements were published, the manner in which the communications refer to the plaintiffs, and the third party's understanding of the communications' defamatory

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[12]Realco Services, Inc. v. Holt, 479 F. Supp. 880, 884 (E.D. Pa. 1979).

[13]Smith, 588 A.2d at 1311.

[14]Moses v. McWilliams, 379 Pa. Super. 150, 549 A. 2d 950 (1988), appeal denied, 521 Pa. 631, 558 A. 2d 532 (1989).

character."[15] Plaintiffs still do not indicate the precise statement(s) made, nor do they attach copies of the statements allegedly printed in the newspaper in compliance with Pennsylvania Rules of Civil Procedure No. 1019(h). While paragraph 111 adds a sentence indicating to whom these allegedly defamatory statements were published, the Complaint is still devoid of specific allegations as to the recipients' understanding of the defamatory character of the communications.

We are also not satisfied that the manner of publication has been pled with sufficient specificity. Paragraph 117 refers to "certain written and verbal statements" and contains that averment that they "were disseminated publicly on radio and television and in newspapers." Missing are critical facts as to when and where the broadcasts occurred and the newspaper statements appears.[16] Failure to specifically identify the allegedly defamatory statements results in the dismissal of the complaint for lack of publication.[17]

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[15]Opinion at 438.

[16]In Smith v. Wagner, supra, plaintiffs claimed damages from the publication of defamatory statements in a local newspaper. While the averments of the complaint were not specific in that matter and the court commented that plaintiff's "style of pleading" was "not to be encouraged," Smith, 588 A. 2d at 1310, the court was able to examine copies of the newspaper attached to the complaint and "find concealed therein a legally cognizable cause of action." Smith, 588 A. 2d at 1310. In this instance plaintiffs, coincidentally represented by an attorney who represented the Smith plaintiffs, have not only replicated the Smith manner of pleading, but failed to provide the court and defense with any tangible factual basis for the publication of objectionable statements.

[17]Moses, 549 A. 2d at 960.

Turning to the wrongful discharge claim contained in Count XII of the Second Amended Complaint, we find plaintiffs have pled no additional facts i consideration of the court's previous Opinion. At that time the Court noted an absence of allegations specifying what wrongful actions were taken by the defendants, whether plaintiffs were notified by defendants of their termination, and whether any plaintiff returned to work and was refused employment. These averments are still absent. in effect, the complaint has changed little, save the addition of conclusions of law. Based upon the absence of factual allegations directed toward curing the deficiencies identified by this court, we determine that plaintiffs cannot proceed with their cause of action for wrongful discharge.

Count XIII of the Second Amended Complaint offers, for the first time in the history of these proceedings, a separate cause of action for the violation of rights protected under Article I, Sections 1, 26, and 28 of the Pennsylvania Constitution. Plaintiffs have not offered this court any case law supporting its position related to a state constitutional claim. In fact, they simply do not address the cause of action. Defendants argue that the complaint extends its pattern of averring legal conclusions to the exclusion of factual assertions.

While, at least in theory, plaintiffs could proceed with a state constitutional claim, our courts have ruled that there are specific standards to meet. The recent focus on a "New Federalism" recognizes the importance of state constitutions with respect to individual rights.[18] These claims do not simply piggyback with other federal constitutional or civil rights claims. Complainants are directed to make a plain statement of adequate and independent state grounds upon

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[18]Commonwealth v. Edmunds, 526 Pa. 374, 586 A. 2d 887, 889 (1991).

which they rely.[19] Plaintiffs, to the contrary, merely reiterate by reference their previous assertions of wrongdoing on the part of the defendants. They have made no effort to allege specific facts to present a cause of action on any state constitutional ground.

Article I, section 1 provides:

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

The protections of this section are broad and sweeping, representing the very foundation of our constitution. This does not, however, invite a complainant to set forth allegations claiming a deprivation of these rights which are equally broad and sweeping.

Our appellate courts have established that there is a right to earn a livelihood,[20] and a right to protect one's reputation[21] guaranteed by Article I, Section 1 of the Pennsylvania constitution. They have also held that an equal protection analysis in this area would be guided by the standards and analysis of the United States Supreme Court. Equal protection requires uniform treatment to similarly

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[19]Edmunds, 586 A. 2d at 895, citing Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983).

[20]Yaindl v. Ingersoll-Rand Company, 281 Pa. Super. 560 422 A. 2d 611, 623 (1980).

[21]Moyer v. Phillips, 462 Pa. 395, 341 A. 2d 441 (1975).

situated parties. If there are differences in treatment, the policy resulting in the distinctions must be reasonably justified. The level of scrutiny depends upon the type of classification being made, the government interest at stake, and the relationship between the two.[22]

The first step in an equal protection analysis is to identify the type of interest at stake.[23] While some plaintiffs are arguably of a suspect class, others may not be. Plaintiffs have failed to aver facts which specifically identify their fundamental rights at stake, the presence of state action operating through the defendants, and how that state action specifically resulted in wrongful disparate treatment of similarly situated persons.

Article I, Section 26 of the Pennsylvania Constitution provides:

> Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

In analyzing a claim under Article I, section 26, the Pennsylvania Supreme Court has adopted a "penalty" analysis. The focus for scrutinizing the claim is on whether the claimant has been penalized for the exercise of a constitutional freedom.[24] As the courts have gone on to explain, this

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[22]Dansby v. Thomas Jefferson University Hospital, 424 Pa. Super. 549, 623 A. 2d 816, 820 (1993).

[23]Love v. Borough of Stroudsburg, 528 Pa. 320, 597 A. 2d 1137, 1139 (1991).

[24]Fischer v. Pennsylvania, Department of Public Welfare, 509 Pa. 293, 502 A. 2d 114, 124 (1985).

section was designed to protect citizens of Pennsylvania from being harassed or punished by the state for the exercise of constitutional rights. Where a plaintiff failed to aver that he was in any way penalized for the exercise of a constitutional right, the court held there was a failure to state a cause of action.[25]

An examination of Count XIII of the Second Amended Complaint reveals that while there are broad assertions of the deprivation of constitutionally protected rights, plaintiffs have failed to allege with any specificity in what manner they were penalized for the exercise of any particular constitutionally protected freedom. The cause of action in this regard thus fails.

Article I, Section 28 of the Pennsylvania Constitution, commonly known as Pennsylvania's Equal Rights Amendment, provides:

> Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

Pursuant to this provision, sex is no longer a factor in determining the legal rights and responsibilities of the citizens of the Commonwealth. The law can no longer impose different benefits and burdens based upon whether the individual is a man or a woman,[26] nor is sex accepted as an exclusive classifying tool.[27]

While plaintiffs again make broad allegations as to

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[25]Bronson v. Lechward, 155 Pa. Cmwlth. 206, 624 A. 2d 799, 801 (1993).

[26]Fischer, 502 A. 2d at 124.

[27]Commonwealth v. Butler, 458 Pa. 289, 328 A. 2d 851, 855 (1974).

defendants' sexually discriminatory actions, they do not allege facts to substantiate the claim. The complaint does not state facts to demonstrate that plaintiffs lost their jobs because they were of a particular sex. In fact, the complaint would indicate that both men and women were dismissed.

Plaintiffs further complain that some of the plaintiffs were dismissed because of their sexual orientation. Paragraphs 9, 11, and 13 describe "lesbian" plaintiffs, and paragraph 143 refers to "a white gay male," all allegedly injured by discriminatory conduct. Plaintiffs fail to demonstrate, however, that homosexual plaintiffs were dismissed while similarly situated heterosexual employees retained their jobs. Further, this court can find no legal precedent in Pennsylvania for identifying a homosexual as a member of a suspect class.[28] Nor has homosexuality been established as a protected class under the Pennsylvania Equal Rights Amendment.

As a final matter, we address several additional demurrers which challenge whether a cause of action has been stated against particular named defendants. Northwestern Corporation (hereinafter "Northwestern") demurs on the ground that the Second Amended Complaint fails to allege any involvement of this defendant in any alleged wrongdoing. Paragraph 32 identifies Northwestern as a Pennsylvania corporation that is "engaged in various for profit and not for profit activities." Additional allegations naming Northwestern are in the context of the corporation as recipient of business referred to them by Handler Center as the result of defendants' actions.[29] Northwestern is also alleged to have encouraged Edgewater Psychiatric Center to pursue a contract to operate the partial hospitalization program then run by Handler Center. According to the Complaint, Northwestern

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[28]See, Doe v. Sparks, 733 F. Supp. 227 (W.D. Pa. 1990).

[29]Second Amended Complaint, paragraphs 46, 47.

subsequently Northwestern in taking control of Handler Center's Certificate of Need.[30]

Defendants respond that the Second Amended Complaint fails to state how Northwestern was involved in causing the plaintiffs' terminations, in defaming the plaintiffs, or in causing any harm to plaintiffs. In the absence of facts establishing an abridgement of plaintiffs' rights directly caused by this defendant's actions, we are constrained to agree with defendants. This demurrer is granted.

Edgewater Psychiatric Center (Hereinafter "Edgewater") demurs for the same reasons. Edgewater is identified as a Pennsylvania corporation involved in the treatment of psychiatric disorders.[31] It is averred that Edgewater also had business referred to it as the result of defendants' actions[32] and it was somehow involved in the termination of Handler Center and some employees. It appears from the Complaint that this represents the extent of Edgewater's involvement. We agree that there are no specific allegations that this defendant was in any way a party to any alleged wrongful discharge or defamation of plaintiffs, or in any other way caused any harm to plaintiffs. the demurrer as to Edgewater is granted.

We similarly grant a demurrer by Dauphin County Mental Health/Mental Retardation Casemanagement Unit, (hereinafter "DCMHC"), a private mental health care provider, alleged to have treated clients of Handler Center following its closure. The Complaint implies that this defendant was also part of an alleged conspiracy to harm plaintiffs. Without specific facts establishing unlawful acts of DCMHC, there exists no cause of action against this party.

Defendants also demur on the grounds that the

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[30]Second Amended Complaint, paragraphs 69 - 76.

[31]Second Amended Complaint, paragraph 31.

[32]Second Amended Complaint, paragraph 46, 47.

Complaint fails to state a cause of action against Dauphin County. As we have stated above, we agree that the Complaint does not set forth sufficient allegations of fact for us to conclude that the county, as a government entity, participated in or authorized a pattern or practice of discriminatory conduct which enabled and encouraged other named defendants to deprive plaintiffs of protected rights. For this reason, as well as the failure of the other causes of action discussed above, the demurrer by Dauphin County is granted.

Defendants Gary Beese and Larry Decker, employees of Pennsylvania's Department of Public Welfare, also filed demurrers to the Complaint. We agree with defendants that there is a strong argument to be made for the operation of sovereign immunity. We do not, however, address that question here, but sustain the demurrers on the following grounds.

The plaintiffs have failed to present this court with well-pleaded facts setting forth the conduct of Beese or Decker that is proscribed by sections 1983 and 1985 or the Pennsylvania Constitution. Similarly, there are insufficient allegations to establish a cause of action against Beese and Decker for civil conspiracy, defamation, and wrongful discharge. Absent allegations that Beese and/or Decker participated in an unlawful combination, made or published defamatory statements, wrongfully discharged plaintiffs, wrongfully closed Handler Center, benefitted from its closing, or are linked in any other way to the results of the alleged unlawful conspiracy motivated by a class-based animus, the causes of action against these two defendants fail and their demurrers to Counts I, II, III, IV, and XIII are granted.

Finally, we address the preliminary objection in the nature of a demurrer of defendant Boswell, Snyder, Titner & Piccola, a law firm, which plaintiffs aver was employed at all

relevant times as the solicitor for Dauphin County.[33] Plaintiffs' theory of liability seems to be based on the fact that on January 10, 1990 William D. Boswell, Esquire, a member of the firm, became the solicitor of Dauphin County. This reasoning is fundamentally faulty, because by statute an attorney, not a law firm, must be appointed as solicitor.[34] Thus, the entire firm cannot be construed as the solicitor as plaintiffs would argue.

There are additional allegations that Jeffrey Piccola, Esquire, a member of the firm and also a member of the Pennsylvania House of Representatives, unlawfully defamed plaintiffs on the floor of the House of Representatives. Paragraph 53 avers that Piccola obtained the false information from his law firm "which serves as solicitor for Dauphin County."

We hold that the law firm was not the solicitor and therefore cannot be held liable in that capacity for any alleged mistreatment of plaintiffs. We further find that the law firm is not liable on the grounds of Piccola's alleged defamatory conduct insofar as the Complaint fails to adequately state facts to establish a cause of action for defamation as set forth above. The demurrers by the defendant law firm are accordingly granted.

Conclusion

Plaintiffs have failed to state a cause of action under each of their thirteen counts. Although this is the first time plaintiffs have asserted a claim pursuant to the Pennsylvania

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[33]Second Amended Complaint, paragraph 30.

[34]16 Pa. C.S. section 901 provides: "The county commissioners shall appoint a county solicitor, who shall be an attorney-at-law admitted to practice in the courts of this Commonwealth. . ."

Constitution and we have previously noted the court's "positive duty" to give the plaintiff opportunity to amend,[35] we find that under the present circumstances such an opportunity is properly denied.

There is ample precedent for granting leave to amend where there is a good chance the complaint could be amended successfully.[36] It was for this reason that this court previously granted plaintiffs leave to amend with specific direction as to the areas where the court identified deficiencies in fact pleading.

We turn to the case of Framlau Corp. v. County of Delaware,[37] wherein plaintiffs had already exercised two opportunities to amend. Where the court found the allegations in the amended complaint were the same as those in the original complaint, it was the court's "opinion that a third or fourth attempt would be as futile as the first two."[38] This court shares this sense of futility. Plaintiffs' inability to incorporate this court's directions in amending its complaint does not bode well for any future efforts. This holds true even for the claims asserted under the Pennsylvania Constitution which mirror the lack of factual allegations to support their broad conclusions of law which prevail throughout the rest of the complaint, despite judicial directives to the contrary.

For all of the foregoing reasons, we enter the following Order.

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[35]Opinion at 440-1.

[36]Pennfield v. Meadow Valley Electric, 413 Pa. Super. 187, 604 A. 2d 1082, 1089 (1992).

[37]Framlau Corporation v. County of Delaware, 223 Pa. Super. 272, 299 A. 2d 335, 338 (1972).

[38]Framlau, 299 A. 2d at 337-8.

ORDER

AND NOW, this 10th day of May, 1994, defendants' preliminary objections in the nature of demurrers are GRANTED and the Complaint is dismissed with prejudice.

BY THE COURT:

Todd A. Hoover, Judge

Supreme Court, U.S.
FILED
MAR 4 1996
CLERK

No. 95-1291

(2)

In The

Supreme Court of the United States

October Term, 1995

DIANN HARRIS CARTER, et al.,

Petitioners,

v.

STANLEY MROZOWSKI, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

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STATEMENT OF THE QUESTION PRESENTED

MAY PENNSYLVANIA REQUIRE THAT COMPLAINANTS FILING ACTIONS IN STATE COURT WHICH RAISE BOTH STATE AND FEDERAL CLAIMS COMPLY WITH THE ORDINARY PLEADING STANDARDS SET FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WHICH ARE UNIFORMLY APPLICABLE TO ALL CLASSES OF CIVIL ACTIONS, AND DO NOT UNDULY BURDEN ACTIONS AUTHORIZED BY FEDERAL LAW.

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STATEMENT OF JURISDICTION

Petitioners incorrectly cite Supreme Court Rule 10.1(b), [now Rule 10(b)], as providing the basis for jurisdiction. However, jurisdiction of the Supreme Court appears to be based upon 28 U.S.C. §1257.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Procedural History of This Action

The original Complaint in the present action was filed by the Plaintiffs (Petitioners herein) in the Court of Common Pleas of Dauphin County, Pennsylvania on June 3, 1992. An Amended Complaint was then filed on June 4, 1992. The only difference between the original Complaint and the First Amended Complaint was that one of the named Plaintiffs was removed from the action.

On July 7, 1992 Preliminary Objections to the First Amended Complaint were filed in behalf of all Defendants (Respondents herein). On September 20, 1993 an Opinion and Order was issued by the Honorable Joseph H. Kleinfelter which sustained the Defendants' demurrers to all counts in the First Amended Complaint, while also granting leave to the Plaintiffs to file a Second Amended Complaint. See Opinion and Order of Judge Kleinfelter attached as Appendix A hereto. On October 12, 1993 the Plaintiffs filed a Second Amended Complaint. On October 29, 1993 the Defendants filed additional Preliminary Objections. On May 10, 1994 a second Opinion and Order was issued by a second judge of the

Dauphin County Court of Common Pleas, the Honorable Todd A. Hoover, which again sustained all of the Defendants' demurrers and dismissed the Second Amended Complaint with prejudice. See Opinion and Order of Judge Hoover at Appendix C of the Petition For Writ of Certiorari. The case was then appealed to the Commonwealth Court of Pennsylvania, which heard the matter upon the record, briefs, and oral argument. On June 2, 1995 the Commonwealth Court issued an Opinion and Order affirming the dismissal by the Court of Common Pleas. See Opinion and Order of the Commonwealth Court at Appendix B of the Petition For Writ of Certiorari. The Plaintiffs next filed a Petition For Allowance of Appeal in the Supreme Court of Pennsylvania, which denied the Petition on November 16, 1995. See Order of the Supreme Court of Pennsylvania at Appendix A of the Petition For Writ of Certiorari. The present Petition For Writ of Certiorari was filed in the Supreme Court of the United States on February 14, 1996.

The Dismissed Second Amended Complaint in This Action

As much as can be determined from the Second Amended Complaint in this action, the two broad claims of the Plaintiffs are that they were unlawfully discharged from their employment and that they were defamed. The federal civil rights claims are but alternative legal theories upon which the Plaintiffs reiterate their state law claims that: a) they were terminated from employment; and b) this termination was accomplished through a vague conspiracy which included as a weapon the use of

defamatory words, which words unfortunately were never set forth in any version of the Complaint.

The Second Amended Complaint consists of thirteen counts. Counts I (42 U.S.C. §1983), II (42 U.S.C. §1985), III (Civil Conspiracy To Wrongfully Discharge, Defame, and Discriminate), XII (Wrongful Discharge), and XIII (Violation of Pennsylvania Constitution) are all grounded on the theory that the Plaintiffs were legally entitled to employment at the Rosalie G. Handler Center and were terminated as a result of a conspiracy among the twenty-one (21) defendants. Neither the manner of the employment termination nor the basis for the allegation of conspiracy were ever stated. Counts IV (Group Defamation), and V through XI (Individual Defamation) express in form the general grievance regarding acts of defamation which is repeated throughout the Second Amended Complaint as a whole. The problem with the entire Second Amended Complaint, as objected to by the Defendants and as held by all of the Pennsylvania Courts which have reviewed this case, is that no facts were ever pled to support the extravagant conclusions alleged. Racial bias, bias against women, bias against lesbians, bias against gay men, and intricate, multi-party conspiracies are all repeatedly alleged against every individual, governmental, or institutional Defendant in this case, but none of these accusations are founded upon a simple and concise summary of the material facts as required by Pennsylvania Rule of Civil Procedure 1019(a). The Second Amended Complaint is a rambling, histrionic text of one-hundred and forty-five (145) repetitious paragraphs filled with argument, indignation, sweeping accusation, angry denunciation, vitriolic contempt, immoderate rhetoric,

irrelevant opinions, and grand legal conclusions. The Plaintiffs were found by every Court which reviewed the matter to have failed to set forth even one coherent cause of action under any of the multiple theories of state and federal law which the Complaint propounds. Not once in the entire document do the Plaintiffs simply set forth either the manner of their alleged dismissal from employment or the words they deem defamatory. No plainly stated fact is supplied anywhere in the Complaint to provide notice to any Defendant as to the alleged defamatory statements, when made, or where, or to whom. Indeed, the Complaint makes a sustained demonstration of carefully avoiding even the minimal particularity which might allow the opportunity for answer or rebuttal. Similarly, on the unlawful discharge theory, the Plaintiffs never state why they decided they were discharged, or by whom, or by what manner of notice.

Procedural History of Prior Actions

The present case is only the most recent episode in a prolonged series of judicial and administrative proceedings arising out of a contractual dispute during 1989 and 1990 between the Dauphin County Mental Health and Mental Retardation (MH/MR) Program, a statutory agency of Dauphin County, and the Rosalie G. Handler Center, a private, non-profit provider of MH/MR services formally independent but almost entirely sustained by funding from Dauphin County. Plaintiff and Petitioner here Rosemary Madl was the Executive Director of the Handler Center between January 2, 1989 and June 15, 1990. Plaintiff and Petitioner here Rodger Beatty was the

Deputy Director of the Handler Center between April 10, 1989 and June 15, 1990. The other Petitioners in this action were also all employees of the Handler Center for various periods of time through June 15, 1990.

The First Legal Action

The first legal action in this general controversy was a Complaint filed to both law and equity in the Dauphin County Court of Common Pleas (No. 4871 Equity 1990) on April 12, 1990, by the Rosalie G. Handler Center, signed and verified by Petitioner here Rosemary Madl, designating as Defendants Dauphin County, Dauphin County Human Services Director Ralph Moyer, and Dauphin County MH/MR Administrator Stanley Mrozowski, all Defendants here. The first action was generally aimed at preventing the exercise of governmental regulatory authority by the Dauphin County MH/MR Program over the Rosalie G. Handler Center, which was regarded as "interference" by the Handler Center. The action was ultimately aimed at preventing the Dauphin County MH/MR Program from discontinuing the Handler Center as the provider of Case Management services after the expiration of the then current contract on June 30, 1990. The Case Management portion of the contract was alone worth nearly $1.5 million dollars, and was funded at 100% by Dauphin County. The legal action thus sought to enjoin the County from the termination of the contract; to compel a renewal of the contract for the next fiscal year; and to enjoin various forms of alleged undue governmental "interference" into the Handler Center's "private" affairs by fiscal and program auditors of the Dauphin County MH/MR Program. The Complaint in that first

case encompassed counts for wrongful interference with relations between the Handler Center and its employees, wherein Dauphin County was accused of attempting to destroy the Handler Center and deprive the Center of its employees, or to deprive employees of their employment at the Center. The Complaint further included a count alleging defamation of the Center by Stanley Mrozowski, Dauphin County MH/MR Administrator, and Ralph Moyer, Dauphin County Human Services Director. As in the present Second Amended Complaint, various illicit and corrupt motives were alleged against Dauphin County, Mr. Moyer, and Mr. Mrozowski. However, despite the sweeping and intemperate accusations made throughout that Complaint, no accusation was anywhere made by or on behalf of the Handler Center or any employee of the agency (including all Plaintiffs here) that the illicit motives for the intended "destruction" of the Handler Center were discriminatory in nature, based on race, sex, sexual orientation, age, or other class-based animus. An Answer With New Matter was filed by Dauphin County on April 23, 1990. No further action occurred on the record in the initial case, even while efforts to resolve the dispute were unsuccessful.

The Second Legal Action

The second legal action in the history of this dispute was a Complaint in equity filed in the Dauphin County Court of Common Pleas (No. 4880 Equity 1990) on May 25, 1990, by the County of Dauphin and the Dauphin County MH/MR Program against the Rosalie G. Handler Center, seeking to enjoin the Handler Center and its officers from continuing to refuse access by the County to

the various financial, clinical, program, and personnel records related to Case Management services. The County had notified the Handler Center on April 20, 1990 that the existing contract would not be renewed, and repeated that notice in the Complaint filed May 25, 1990. On June 6, 1990 the Handler Center filed an Answer and Counterclaim, seeking as in the first action, albeit now more directly, to enjoin Dauphin County from terminating any portion of the contract prior to the expiration of that contract on June 30, 1990, and seeking as well to compel Dauphin County to renew the entire contract, despite the fact that a contrary decision regarding Case Management services had been made by the County Administrator of the MH/MR Program, the County Human Services Director, and the Dauphin County Commissioners.

The Answer and Counterclaim of the Handler Center again recited various broad and unsubstantiated allegations of corrupt or illicit motive. Once again, no claim was anywhere made in the second action by or on behalf of the Handler Center, or any employee of the agency including the Plaintiffs here, that the "motives" for the "destruction" of the Handler Center were discriminatory in nature, based on race, sex, sexual orientation, age, or any other class-based animus. Thus, in two prior proceedings in Dauphin County Court based on the same facts, no claim of discrimination was raised despite the clear opportunity to raise such claims amid the numerous other claims and allegations which were made by the Handler Center and the Plaintiffs here specifically in behalf of the continued employment of the Center's employees, and specifically in protest of alleged illegal acts and conspiracies, corrupt motives, and episodes of

defamation, all aimed, by allegation, at this same "Handler management" who have again filed the present suit.

On June 15, 1990 Dauphin County and the Dauphin County MH/MR Program filed an Answer To Counterclaim and Request For Supplemental Injunction, requesting emergency Orders authorizing Dauphin County to assume immediate supervisory authority over the entire operation of the Handler Center. This request was supported in the record by sixteen (16) affidavits by Handler Center employees detailing pervasive inefficiencies and severe maladministration at the agency.

On June 15, 1990, the Honorable James Buckingham of the York County Court of Common Pleas, Specially Presiding, issued two Orders sustaining the full regulatory authority of the Dauphin County MH/MR Program and granting the request of Dauphin County to control and supervise the services provided at the Handler Center. These regulatory powers were principally enforced by the Court assigning to Dauphin County control of all the financial, personnel, programmatic and other records of the agency, and vesting the County with leasehold rights to premises then occupied by the Handler Center although paid for with County allocated funds. On June 19, 1990 a Second Supplemental Order was issued by the Court directing an audit of the Handler Center by the Pennsylvania Department of Public Welfare, and appointing Dauphin County to act as Trustee of various agency assets, which were almost entirely County owned in any case. On June 22, 1990 a Third Supplemental Order was issued to protect the agency mails from further re-direction or confiscation by disaffected Handler Center agents; and directing the return of all the principal financial

records of the agency showing the status and disposition of State and County funds, which records had been unlawfully removed from agency premises after the initial Court Orders of June 15, 1990.

The Bankruptcy Action

On June 22, 1990 persons purporting to act for the Rosalie G. Handler Center filed a Petition In Bankruptcy in the United States District Court for the Middle District of Pennsylvania (M.D. 1-90-01052), seeking to regain control of assets assigned to Dauphin County by state court Orders, seeking to avoid those state court Orders, and to re-litigate matters which had been previously resolved. On June 29, 1990 Dauphin County filed a Motion For Abstention From Bankruptcy Pending State Trusteeship.

Settlement of First Three Actions

On July 24, 1990 a general Settlement Agreement was executed between Dauphin County (with the Dauphin County MH/MR Program) and the Board of Directors of the Rosalie G. Handler Center. The main elements of this Settlement were that the Handler Center assigned all of its assets to the County, while the County assumed all of the debts of the Handler Center, and assumed full management and control over all the operations of the agency. Twenty-Two (22) Handler Center employees, including the ten (10) Plaintiffs here, most of whom are white, had boycotted the agency after Judge Buckingham's June 15, 1990 Court Orders, refused to return to work, and were paid through the Settlement for their accrued vacation times. The Settlement also resulted in the discontinuance

of all the litigation then outstanding, including the two prior Dauphin County civil actions and the federal bankruptcy action.

Pennsylvania Human Relations Commissions Actions

The next chapter of litigation involved concerted action by fifteen (15) of the twenty-two (22) non-returning Handler Center employees, including all ten (10) Plaintiffs here, in filing complaints at the Pennsylvania Human Relations Commission, the Equal Opportunity Employment Commission (EEOC), and the Harrisburg Human Relations Commission. In respect to all those actions, Dauphin County filed complete Answers with statistical charts demonstrating that the allegations of discrimination were not only false, but that the percentage of minority employees in the successor agencies of the Handler Center was higher than under Plaintiff Rosemary Madl prior to June 15, 1990. See Appendix B hereto. All the Human Relations and EEOC actions were either dismissed by the respective Commissions or withdrawn by the Plaintiffs.

STATEMENT OF FACTS

The Dauphin County Mental Health and Mental Retardation Program is the local governmental agency charged by law with the administration of Federal, State and County funds to provide a wide array of services for the mentally disabled citizens of Dauphin County. See Pennsylvania Mental Health and Mental Retardation Act of 1966, 50 P.S. §4301 et seq.

The present case has its origins in a decision by the Dauphin County Mental Health and Mental Retardation Program not to renew its contract with the Rosalie G. Handler Center for the provision of Case Management Services, Partial Hospitalization, and Outpatient services. The total value of the contract was $2,096,185.00, representing over 85% of all Handler Center revenue.

From January, 1989 through April, 1990 a variety of serious program, personnel, and policy problems had emerged at the Handler Center. These deficiencies at the Handler Center were alone sufficient to justify the County discontinuing the Center as an authorized provider. However, it was not until the days immediately preceding the Court hearing on June 15, 1990 that Dauphin County discovered the most stunning evidence of misconduct and mismanagement at the Handler Center, when sixteen (16) employees of that agency, at great risk to their own employment, came forward to report in great detail and upon personal knowledge the full extent of the crisis at the Handler Center to Dauphin County authorities, in the form of affidavits attached to the Answer To Counterclaim With New Matter and Request For Supplemental Injunction, filed by Dauphin County on June 15, 1990.

On June 15, 1990 a hearing on the conflicting requests for injunctive relief by Dauphin County and the Handler Center was held before the Court of Common Pleas, Judge James Buckingham of the York County Court of Common Pleas, Specially Presiding. Upon review of the contract between the parties, and the pleadings, exhibits, and briefs, Judge Buckingham issued Orders authorizing Dauphin County to terminate the contract; transferring

control of all financial, personnel, program and client records at the Handler Center to Dauphin County; transferring County owned equipment and supplies back to actual County possession; and vesting the County with immediate rights to succeed to the use and occupancy of all premises which had been leased by the Handler Center with County allocated funds for County contracted purposes. The Orders were less sweeping than they seemed, since specific provisions of the contract had unambiguously provided that the County retained title to all assets paid for with County funds, and also retained all rights to the various records used in providing the services funded by the County. The Sheriff of Dauphin County was authorized to secure the premises of the Handler Center at several locations throughout the County, in order to enforce the Orders of the Court and especially to prevent the further removal or destruction of agency records.

Judge Buckingham also entered the following Order from the bench:

> Under the contract and the law, as we have said, where the contract on its face is not subject to any differing interpretation by reasonable people, the Court may and does and should declare as a matter of law that the contract speaks for itself. And we have done that in this case. And, as we have said, we believe that the county does have the right under the contract and the regulations and the Acts of Assembly to terminate this contract. We find that they have the county has declared that the contract should be terminated for whatever reason they believe and in this case what they believe is a fair

> reason for it. We are bound by this and we so order.

That same day, June 15, 1990, Plaintiff and Petitioner here Rosemary Madl, in her capacity as Executive Director of the Rosalie G. Handler Center, issued a written notice to all Handler Center employees that:

> The Board of Directors and the management team of the Rosalie G. Handler Center regretfully inform you that you are furloughed effective at the end of today, Friday, June 15, 1990. We will immediately approve all claims for unemployment compensation.

Next, on the morning of June 18, 1990 the Handler Board Chairman sent a letter to the Office of Mental Health, Department of Public Welfare, canceling Handler's Medical Assistance Provider Agreement, canceling its licenses to operate the partial hospitalization and outpatient programs, and requesting that Medical Assistance monies then due from the Department be forwarded to a post office box.

Among other reasons the wrongful discharge and civil rights claims in the Second Amended Complaint were dismissed for failure to state a claim is that none of the Plaintiffs here were even employees of any of the Defendants, and the Plaintiffs did not attempt to so allege in any version of their Complaint. The theory of the Plaintiffs seems rather to have been that as employees of the Rosalie G. Handler Center they somehow had an entitlement to continued employment at that private agency, and when Dauphin County was authorized by the Court Orders of June 15, 1990 to terminate the existing contract, while the County itself had decided not to

renew (as of July 1, 1990) the contract for the following fiscal year, the Plaintiffs' "right to employment" was thereby "violated" by the County, which was acting in a vague conspiracy with the other twenty (20) Defendants. However, these facts do not make a claim for wrongful discharge, especially as it was Plaintiff Rosemary Madl herself who issued the only termination notice in the entire case, quoted from the record above, the same day (June 15, 1990) that Judge Buckingham issued his Orders. Fortunately, successor agencies did hire all former Handler Center employees who applied for positions. Not one of the ten (10) Petitioners here ever applied for work at the County, or at any of the successor agencies to which the County reassigned the programs formerly contracted to the Handler Center, nor were any such applications for employment ever alleged by any Plaintiff in any version of their Complaint.

Uncontradicted exhibits submitted to the record of all the Pennsylvania Human Relations Commission actions and again in the underlying record of this case (reproduced at Appendix C hereto) show that on June 18, 1990 more than sixty (60) employees of the Handler Center returned to work. Twenty-two (22) employees refused to return to work. Fifteen (15) of the boycotting employees were white, six (6) were black, and one (1) was hispanic. In contrast, there were more black employees (10) who returned to work than joined the boycott (6). As of April 1, 1990 the Handler Center had a total of eighty-two (82) employees, of whom fifteen (15) were black, or 18%. As of September 21, 1990, three months after Dauphin County transferred the same programs to other providers, the total number of employees in the three services was sixty-

eight (68), of whom fifteen (15) were black, or 22%. Thus, not only did more black employees return to work on June 18, 1990 than joined the boycott, but three months later the settled work-force, including new employees, had a higher percentage of black employees than under the administration of Petitioners Rosemary Madl and Rodger Beatty, both of whom are white.

As of June 15, 1990 Handler's management staff was 33% racial minorities and 83% female. As of September 21, 1990 there were eight (8) managers in the Case Management Unit, two (2) of whom were black. There was one (1) manager in the Partial Hospitalization Program, a white female. Accordingly, as of September 21, 1990 management staff for the new Case Management, Outpatient, and Partial Hospitalization Services was 22% black and 78% female.

At the Statement of the Case in the Petition For A Writ of Certiorari, the Petitioners state (p.5) that "Petitioners are ten (10) individuals composed *largely* of black women . . . " (Emphasis added). In fact, only four (4) of the ten (10) Petitioners are black, and the other six (6) Petitioners are white.

The Second Amended Complaint in the present case was dismissed only after an opportunity to amend had been granted and the Plaintiffs had failed for a second time simply to set forth a coherent and concise statement of the material facts such as would disclose a cause of action for conspiracy, discrimination, wrongful discharge, or defamation under any theory of state or federal law.

REASONS FOR DENYING THE WRIT

PENNSYLVANIA MAY REQUIRE THAT COMPLAINANTS FILING ACTIONS IN STATE COURT WHICH RAISE BOTH STATE AND FEDERAL CLAIMS COMPLY WITH THE ORDINARY PLEADING STANDARDS SET FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE WHICH ARE UNIFORMLY APPLICABLE TO ALL CLASSES OF CIVIL ACTIONS, AND DO NOT UNDULY BURDEN ACTIONS AUTHORIZED BY FEDERAL LAW.

The proposition of the Petitioners in the instant matter is that the pleading standards applicable to complaints filed in federal district courts pursuant to Federal Rule of Civil Procedure 8(a) should be likewise imposed upon the states in all cases brought in state courts under federal civil rights acts, particularly 42 U.S.C. §1983. The Petitioners optimistically assert that their Second Amended Complaint would have met the notice-pleading standard of F.R.Civ.P. 8(a), and that therefore the dismissal of the case upon their failure to satisfy the fact-pleading standard of Pennsylvania Rule of Civil Procedure (Pa.R.Civ.P.) 1019(a) violated the Due Process Clause of the Fourteenth Amendment and the Supremacy Clause of Article VI, Section I. However, the precedents of this Court do not establish any such general rule.

It is fundamental law that the Federal Rules of Civil Procedure do not govern practice and procedure before state courts. *Bradt v. Smith,* 634 F.2d 796, 799 (5th Cir. 1981), cert. denied 454 U.S. 830, 102 S.Ct. 125; *Rader v. Baltimore & Ohio R.Co.,* 108 F.2d 980 (7th Cir. 1940), cert. denied 309 U.S. 682, 60 S.Ct. 722. Federal Rule of Civil Procedure 1 states that the scope of the Rules is limited to

governing "the procedure in the *United States district courts* in all suits of a civil nature . . . " (Emphasis added) . See generally, Wright & Miller, *Federal Practice and Procedure, Civil 2d,* §1012 (1987). The Supreme Court itself has stated that:

> No one disputes the general and unassailable proposition . . . that States may establish the rules of procedure governing litigation in their own courts. By the same token, however, where state courts entertain a federally created cause of action, the "federal right cannot be defeated by the forms of local practice."

Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 2306 (1988), quoting from *Brown v. Western R. Co. of Alabama,* 338 U.S. 294, 296, 70 S.Ct. 105, 106 (1949).

In *Brown v. Western R. Co. of Alabama, supra,* this Court held that a Georgia rule of practice requiring that a complaint be construed "most strongly against the pleader" (*Id.,* 106) could not be applied to preclude recovery in the state courts on a cause of action under the Federal Employees Liability Act. 45 U.S.C. §51 et seq. The Supreme Court stated that:

> Strict local rules of pleading cannot be used to impose unnecessary burdens upon rights of recovery authorized by federal laws. "Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, where plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler,* 263 U.S. 22, 24 44 S.Ct. 13, 14 (1923). (Additional citation omitted). Should this Court fail to protect federally created rights

> from dismissal because of over-exacting local requirements for meticulous pleadings, desirable uniformity in adjudication of federally created rights could not be achieved. (Citation omitted).

Brown v. Western R. Co. of Alabama, supra, 108. The *Felder v. Casey, supra,* decision similarly disapproved procedural hurdles which have the effect of "burdening" the presentation of a federal cause of action in a state court. Thus, in reviewing state pleading and other procedural requirements as applied to federal causes of action, the *Brown* and *Felder* decisions indicate that state rules of procedure will not be set aside as long as they do not represent an "unnecessary burden" on substantive federal rights. States may enforce rules of pleading which are uniform and do not defeat the assertion of federal rights to at least assure, on the standard quoted from *Davis v. Wechsler,* above, that the pleading has been "plainly and reasonably made." In the application of that rule of reason, and to avoid unnecessary burdens on federal rights, it has never been held that state courts are obligated to adopt the notice-pleading standards of the Federal Rules of Civil Procedure.

The procedural burden invalidated by *Felder* was a state notice of claims statute which provided that before an action could be brought in a Wisconsin court against a governmental entity or officer the plaintiff was required to notify the defendant of the circumstances and amount of the claim within 120 days of the occurrence; the plaintiff was then required to wait 120 days for the defendant to grant or refuse the requested relief; and the plaintiff was then obligated to bring suit within six months of

receiving notice that the claim was refused. The Supreme Court held that the notice of claims statute was a "burden" upon federal actions under 42 U.S.C. §1983 since it was not a neutral and uniformly applicable predicate to all civil actions but instead operated directly to limit governmental liability, which limitation of liability was inconsistent with federal law. The Court held that "This defendant-specific focus of the notice requirement serves to distinguish it, rather starkly, from rules uniformly applicable to all suits . . . " *Felder v. Casey, supra,* 2310.

In the present case the state and federal claims of the Petitioners were dismissed for failure of the Petitioners to adequately plead a cause of action under the standard of Pennsylvania Rule of Civil Procedure 1019. See Opinion of the Commonwealth Court of Pennsylvania, p. 4a, Appendix B, Petition For Writ of Certiorari. Unlike the notice of claims rule in *Felder,* Pa.R.Civ.P. 1019 is uniformly applicable to all classes of civil litigation filed in Pennsylvania trial courts. Thus, the argument of Petitioners that Pennsylvania imposes "heightened" pleading standards on federal civil rights actions is erroneous. The pleading rules applicable to federal civil rights actions are identical to pleading rules applicable to all other cases. Likewise, in the language of the *Brown* decision, the Pennsylvania pleading rule here at issue is neither "strict" nor "over-exacting," and does not operate to require "meticulous pleadings" nor to "impose unnecessary burdens upon rights of recovery authorized by Federal laws." *Brown v. Western Railway of Alabama,* 338 U.S. 294, 298, 299, 70 S.Ct. 105, 108 (1949). Moreover, while the Georgia practice rule in *Brown* provided that a civil complaint was to be construed "most strongly against the

pleader," (*Id.*, 106), Pa.R.Civ.P. 126 expressly provides in contrast that:

> The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The Court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Indeed, under the precedents by which Pennsylvania courts review the sufficiency of a complaint, all reasonable inferences are drawn *in favor* of the pleader, accepting as true all well-pleaded factual allegations when read in the light most favorable to the plaintiff. *Gekas v. Shapp*, 469 Pa. 1, 364 A.2d 691, 693 (1976). The Petitioners received the benefit of this rule as expressly applied by the Pennsylvania Courts in this case. See Opinion of Judge Todd A. Hoover, p. 10a, Appendix C, Petition For Writ of Certiorari; and Opinion of Judge Joseph H. Kleinfelter, p. 6a, Appendix A, attached hereto.

In 1937 the Pennsylvania Legislature authorized the Pennsylvania Supreme Court to adopt and enforce general rules governing the practice and procedure in civil actions before the County Courts of Common Pleas. 17 P.S. §61 et seq. (repealed). That judicial power was then incorporated into the 1968 Constitution of the Commonwealth of Pennsylvania, Article V, Section 10(c), which provides in relevant part as follows:

> The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . if such rules are consistent with this Constitution and

> neither abridge, enlarge nor modify the substantive rights or any litigant . . .

This provision is now incorporated in equivalent terms in the Pennsylvania Judicial Code, 42 Pa.C.S.A. §1722(a). The particular rules applicable to pleading, Pa.R.Civ.P. 1017-1035, were adopted in 1946 and became effective on January 1, 1947. The principal purpose of these rules was to modernize and liberalize the strict pleading requirements of the Practice Act of 1915, 12 P.S. §386 (repealed). The present pleading standard by which the sufficiency of a complaint is measured is set forth at Pa.R.Civ.P. 1019(a), as follows:

> (a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

The complete text of Pa.R.Civ.P. 1019 is set forth at Appendix B hereto. Rather than constituting a burden on substantive rights, either state or federal, Pa.R.Civ.P. 1019(a) simply requires a plain statement of the "material facts" on which a cause of action is based, set forth "in a concise and summary form." While the Rule does require fact pleading rather than notice pleading, meticulous specificity is not required. *Local No. 163, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 417 Pa. 120, 207 A.2d 776 (1965). A plaintiff is not required to plead evidence. *H.M. Bickford Co. v. Speigle*, 384 Pa. 227, 120 A.2d. 167 (1956). A complaint need only set forth the minimum facts sufficient to show the prima facie elements of the cause or causes of action alleged. *Cianfrani v. Commonwealth, State Employees' Retirement Board*, 505 Pa. 294, 479 A.2d. 468 (1984); *Feingold v. Hill*, 360 Pa.Super. 539, 521

A.2d 33 (1987), appeal denied 515 Pa. 607, 529 A.2d. 1081. A complaint must at least, but also need only give the defendant fair notice of the nature of the plaintiff's claim and should identify the basis of the complaint and the issues involved by summarizing the material facts. *Jackson v. Southeastern Pennsylvania Transportation Authority,* 129 Pa.Cmwlth. 596, 566 A.2d 638 (1989), appeal denied 527 Pa. 656, 593 A.2d 426. Argument, opinion, commentary, conclusions of law, or irrelevant or impertinent averments are not sufficient to sustain a complaint which neglects to simply and concisely set forth the material facts for the cause of action alleged. *Bloom v. Dubois Regional Medical Center,* 409 Pa.Super. 83, 597 A.2d 671 (1991); *Giffin v. Chronister,* 151 Pa.Cmwlth. 286, 616 A.2d 1070 (1992). Damning rhetoric, however impassioned and however presented at length, cannot be substituted for a simple summary of the material facts. The material facts are only those essential to support the cause of action. The *minimum* facts material to the cause will be deemed sufficient, and the failure to plead other or all of the material facts is not a deficiency. No technical recitals are required, since in Pennsylvania pleadings will be liberally construed. Pa.R.Civ.P. 126, quoted above. See generally, 4 *Standard Pennsylvania Practice,* §§21:32-21:67 (1993); 2 *Goodrich Amram 2d,* §1019 (1991).

The pleading standards applied by Pennsylvania courts hardly constitute a burden upon litigants seeking to present either state or federal claims. The Rules are uniformly applied to all classes of civil litigation. The only actions in which "heightened" pleading standards are imposed are those in which fraud or mistake is

alleged, as provided by Pa.R.Civ.P. 1019(b) in a requirement nearly identical to that imposed on the same class of action in federal court by F.R.Civ.P. 9(b). Even in cases sounding in fraud the rules of pleading are still liberally construed so as not to introduce technical pleading hurdles, render the process burdensome, or prevent legitimate actions from going forward. *Foster v. Peat Marwick Main & Co.*, 138 Pa.Cmwlth. 147, 587 A.2d 382 (1991).

It is therefore plain that Pennsylvania does not utilize its Rules of Civil Procedure to impose special or needless burdens upon the presentation of federal claims. Federal civil rights plaintiffs are required to satisfy only the same liberal pleading standards as are applied to all other cases. Those standards do not "dig into substantive rights" nor foreclose federal claims which have been "plainly and reasonably made," nor "impose unnecessary burdens upon rights of recovery authorized by federal laws" as forbidden by this Court in *Brown v. Western Railway of Alabama*, 338 U.S. 294, 296, 298, 299, 70 S.Ct. 105, 106, 108 (1949). Indeed, the Pennsylvania pleading rules do nothing other than require that causes of action in a complaint be "plainly and reasonably made" in order to give fair notice to the defendants, define the issues, and allow a responsive answer setting forth available defenses. The rules do not operate to minimize liability for particular defendants or particular causes of action, nor to establish strict conditions precedent to a right of recovery, nor to otherwise burden the vindication of federal rights in state court, as was found by this Court in *Felder v. Casey*, 487 U.S. 131, 108 S.Ct. 2302 (1988).

The Petitioners in this case were given an opportunity to amend their Complaint after the first set of

preliminary objections and initial judicial review. Judge Kleinfelter in that initial decision (Appendix A hereto) analyzed each count of the First Amended Complaint, identified the deficiencies therein, and even provided guidance to the Plaintiffs as to the averments which would be necessary to correct those deficiencies. Rather than comply with that Opinion the Petitioners made only minor editorial changes and rhetorical additions to the Complaint. Thus, upon subsequent review at the trial court level, upon a second set of preliminary objections, Judge Hoover stated as follows:

> Plaintiffs have failed to state a cause of action under each of their thirteen counts. Although this is the first time plaintiffs have asserted a claim pursuant to the Pennsylvania Constitution and we have previously noted the court's "positive duty" to give the plaintiff opportunity to amend, we find that under the present circumstances such an opportunity is properly denied.
>
> There is ample precedent for granting leave to amend where there is a good chance the complaint could be amended successfully. It was for this reason that this court previously granted plaintiffs leave to amend with specific direction as to the areas where the court identified deficiencies in fact pleading.
>
> We turn to the case of *Framlau Corp. v. County of Delaware,* (citation omitted) wherein plaintiffs had already exercised two opportunities to amend. Where the court found the allegations in the amended complaint were the same as those in the original complaint, it was the court's "opinion that a third or fourth

> attempt would be as futile as the first two." This court shares this sense of futility. Plaintiffs' inability to incorporate this court's directions in amending its complaint does not bode well for any future efforts. This holds true even for the claims asserted under the Pennsylvania Constitution which mirror the lack of factual allegations to support their broad conclusions of law which prevail throughout the rest of the complaint, despite judicial directives to the contrary.

Opinion of Judge Todd A. Hoover, p. 23a-24a, Appendix C, Petition For Writ of Certiorari. Even Federal Rule of Civil Procedure 8(a), requiring only "a short and plain statement of the claim showing that the pleader is entitled to relief" does not constitute a license for baseless litigation in which a complaint consists only of arguments, opinions, and conclusions of law. *Jewell v. City of Covington, Ga.*, 425 F.2d 459 (5th Cir. 1970), cert. denied 400 U.S. 929, 91 S.Ct. 195; *Moten v. American Linen Supply Co.*, 155 F.R.D. 202 (D. Kan. 1994).

The citation of *Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553 (1980) by the Petitioners for the proposition that "federal standards should prevail in converse – *Erie* 42 U.S.C. §1983 cases where federal and state rules conflict" (p. 10) is inapposite, since the pleading standards of the California courts were not at issue. In *Martinez* this Court actually *approved* the holding of the California courts that no claim is stated under 42 U.S.C. §1983 against a parole board for a murder committed by a parolee. Similarly, *Maine v. Thiboutot*, 448 U.S.1, 100 S.Ct. 2502 (1980) held only that the Civil Rights Attorney's Fees Awards Act of 1976, making attorneys fees available to the prevailing party in any action or proceeding to enforce a provision

of 42 U.S.C. §§1981, 1982, 1983, and other civil rights statutes, was applicable to all such claims whether brought in federal or state court. *Maine* thus clearly concerned the application of substantive federal law in state courts, and did not concern rules of pleading or procedure. Likewise, *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246 (1946) concerned only the obligation of state courts to recognize substantive federal law. *Garrett* merely held that a state law doctrine concerning the validity of a release of liability signed by a seaman could not be applied to cases arising in admiralty under the federal Merchant Marine Act, also known as the Jones Act, 46 U.S.C. §688.

In *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, ___ U.S. ___, 113 S.Ct. 1160 (1993) the only issue was "whether a federal court may apply a 'heightened pleading standard' – more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure – in civil rights cases alleging municipal liability . . . " *Leatherman, supra,* 1161. This Court held that the "heightened pleading standard" was inconsistent with Federal Rule 8(a), which is uniformly applicable to all federal civil actions (except as otherwise provided at F.R.Civ.P. 81) and requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." This Court found no authority in statute or rule to distinguish federal pleading standards for civil rights cases from all other cases. The Court did note that F.R.Civ.P. 9(b) imposes particularity requirements upon complaints alleging fraud or mistake, but did not set forth a differing standard for civil rights claims

against governmental entities. This Court stated as follows:

> Perhaps if Rules 8 and 9 were rewritten today, claims against municipalities under §1983 might be subjected to the added specificity requirements of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, supra, 1163. Thus, *Leatherman* required only a uniform application of the Federal Rules of Civil Procedure by federal courts to all classes of civil action, including civil rights actions. *Leatherman* does *not* require the application of the Federal Rules of Civil Procedure in state courts whenever a federal cause is there filed. Moreover, the rule of uniform application has not been offended here, since federal causes filed in Pennsylvania courts are only examined against the same pleading standards applicable to all other cases under the Pennsylvania Rules of Civil Procedure.

The Petitioners make no effort to show how any Pennsylvania Rule of Civil Procedure unduly burdened the presentation of their case in state court. Their grievance is simply that their Second Amended Complaint, state claims and federal claims alike, was dismissed for failure to state any claim. A result unwanted by the Petitioners does not without more establish that the process which led to that result was unconstitutional. Petitioners assert in a vacuum that their Complaint would have satisfied the pleading standards of F.R.Civ.P. 8(a). However, the deficiency of the Petitioners' Complaint

even against the standard of F.R.Civ.P. 8(a) need not be demonstrated here in order to show that the dismissal by the Pennsylvania Courts was entirely proper, since nothing in the Pennsylvania Rules of Civil Procedure imposed any burden upon Petitioners such that their opportunity to present their federal claim was unconstitutionally frustrated under either the Fourteenth Amendment or the Supremacy Clause. No such burden has been identified by the Petitioners.

CONCLUSION

For the reasons set forth above it is respectfully requested that the Supreme Court deny the Petition For Writ of Certiorari.

Respectfully submitted,

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Dated: March 5, 1996

APPENDIX A

OPINION AND ORDER OF THE DAUPHIN COUNTY COURT OF COMMON PLEAS FILED SEPTEMBER 20, 1993

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, and RODGER L. BEATTY, Plaintiffs	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
vs.	:	NO. 2271 S 1992
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICOLLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, Individually; BOSWELL, SNYDER, TINTNER & PICCOLA, a law firm, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION CASE MANAGEMENT UNIT and DAUPHIN COUNTY MENTAL HEALTH & MENTAL RETARDATION COUNSELLING, PRIVATE CORPORATIONS and DAUPHIN COUNTY, a local government entity, Defendants	:	CIVIL ACTION – LAW

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

OPINION

This matter comes before the court on defendants' preliminary objections to plaintiffs' complaint. The instant action arises from Dauphin County's decision not to renew its contract with the Rosalie G. Handler Center, a provider of mental health and mental retardation services. The facts in this case were difficult to ascertain as a result of the skeletal and conclusory nature of plaintiffs' complaint, but we have been able to glean the following facts from plaintiffs' complaint.

The amended complaint[1] alleges that the plaintiffs[2] were all employed in various positions at the Rosalie G. Handler Center until their dismissal on June 15, 1990. Plaintiffs aver that they were dismissed because of their race, sex and/or sexual orientation and were replaced by white males, all of whom were not homosexual, and were less qualified and capable than the plaintiffs. Plaintiffs state that their rights to substantive and procedural due process and equal protection of the laws were violated by the defendants[3], who were government employees acting

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[1] Plaintiffs' original complaint was filed on June 3, 1992. An amended complaint was filed on June 4, 1992. The only difference between the original and amended complaints was that one of the named plaintiffs, Lucy Bibby, was dropped from the action.

[2] Plaintiffs are Diann Carter, Joanna Foster, Joyce Waters, Gwendolyn Manning, Lucy Bibby, Deborah Alger, Frances Manning, Dr. Rosemary Madl, Marilyn Lovell, Cathy Consla, and Rodger Beatty.

[3] Defendants are Stanley Mrozowski, Administrator, Dauphin County Mental Health and Mental Retardation Program; Ralph Moyer, Director of Dauphin County Human

under color of state law, and who illegally agreed among themselves to destroy, harass, and defame plaintiffs because of their race, sex or sexual orientation.

In the amended complaint, plaintiffs claim that they do not know the precise dates or times when the defendants conducted meetings to discuss their plans to harm the plaintiffs and destroy the Handler Center, but that "an unlawful combination for unlawful purposes was participated in by all defendants" from 1989 until June 15, 1990. (Paragraph 47) Plaintiffs continue by alleging that defendants Stanley Mrozowski, Administrator of the Dauphin County Mental Health & Mental Retardation Program, and Ralph Moyer, Director of Dauphin County Human Services, both made defamatory statements with respect to the conduct and qualifications of the plaintiffs in an effort to discredit them, knowing the statements to be untrue. The amended complaint avers that defendant Moyer made the statement "we're going to get rid of

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Services; Jeffrey Piccola, State Representative and member of the law firm of Boswell, Snyder, Tintner & Piccola; John Thomas, a social worker at Edgewater Psychiatric Center; Dahl Krow, a contract monitor for Dauphin County; Mark Barton, a mental health specialist for Dauphin County, Gary Beese, a manager for the Office of Mental Health Mental Retardation of the Department of Public Welfare; Larry Decker, an employee of the Department of Public Welfare; Deborah Gantt, Sandy Reisinger, and Kelly Dunlap, case managers at Rosalie G. Handler Center; Patricia Bard and Wendy Minnix, therapists at Rosalie G. Handler Center; Lynn Loomis, a case management supervisor at the Handler Center; Irene Urban, the fiscal coordinator at the Handler Center; Boswell, Snyder, Tintner & Piccola, the Edgewater Psychiatric Center, the Northwestern Corporation, the Dauphin County Mental Health and Mental Retardation Counseling and Dauphin County.

them", referring to plaintiffs, to Dauphin County Commissioner Peters in early 1990. (Paragraph 51)

Plaintiffs also claim that defendants Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban, all employees of the Handler Center, made defamatory statements attacking their supervisors, knowing that their accusations were false. (Paragraphs 58-64) According to the complaint, defendant Jeffrey Piccola, a member of the Harrisburg law firm of Boswell, Snyder, Tintner & Piccola, carried these defamatory statements, which were unverified, to the floor of the Pennsylvania House of Representatives, where he made reference to them and discussed them with reporters for the Harrisburg *Patriot News*.

Additionally, defendants Larry Decker, a DPW-OMH Licensure representative for the DPW Central Regional Office, and Gary Beese, a community program manager for the Commonwealth of Pennsylvania Community Mental Health Services, are alleged to have used their authority over licensing procedures in Pennsylvania to create grounds for defendants Mrozowski, Moyer, DCMHC, and Dauphin County to charge mismanagement at Handler. Plaintiffs also aver that defendant Thomas, an employee of defendant, Edgewater Psychiatric Hospital, generated false reports of mismanagement at Handler by claiming that defendant Foster, an employee at the Handler Center, was not attending aftercare follow-up meetings. Plaintiffs claim that all of the above defamatory statements were made by the defendants in an effort to establish that Handler was mismanaged so that Edgewater Psychiatric Center, which was in serious financial difficulty from 1988 through June

15, 1990, could gain access and control of Handler's partial program and case management resources.

Dauphin County notified the Handler Center that it would not be renewing its contract upon its expiration on June 30, 1990. On June 15, 1990, Judge James Buckingham issued orders authorizing Dauphin County to have the full use and occupancy of all premises leased, owned or occupied by the Handler Center. The order also transferred all county owned equipment and supplies, including client files and records, from Handler to the county. (See Order, Supplemental Order and Third Supplemental Order, 4880 Equity 1990)

As a result of the above court order, plaintiffs claim that they were physically forced out of their offices without warning and their rights to be secure in their person and property were violated. Plaintiffs' complaint alleges that the Handler Board was told that if it failed to sign over all of its assets immediately, criminal charges would be brought against one of the plaintiffs, Dr. Rosemary Madl. Plaintiffs claim that the Handler Board dissolved the Rosalie Handler Center in July 1992 as a result of defendant Piccola and other defendants publicly proclaiming that "the Handler Board is rotten to the core." (Paragraph 86)

Plaintiffs' complaint consists of fifteen counts. Counts I & II allege violations of civil rights pursuant to 42 U.S.C. §1983. Counts III and IV aver violations of civil rights pursuant to 42 U.S.C. §1985 and 42 U.S.C. §1981. Count V is a claim for civil conspiracy to defame plaintiffs. Counts VI-XIII are all claims for defamation. Count XIV is an allegation of wrongful discharge. Finally, Count

XV alleges a violation of Harrisburg Ordinance 6-1983. All of the defendants filed preliminary objections in the nature of demurrers and motions for more specific pleadings.

The issues before this court are as follows: (1) Does plaintiffs' complaint state a cause of action against any of the defendants for violation of their civil rights pursuant to 42 U.S.C. §1983, 42 U.S.C. §1985, or 42 U.S.C. §1981? (2) Can plaintiffs set forth a cause of action for civil conspiracy? (3) Have plaintiffs alleged a cause of action against any of the defendants for defamation? (4) Does plaintiff's complaint state a cause of action for wrongful discharge? (5) Have plaintiffs alleged a violation of Harrisburg Ordinance 6-1983?

The factual allegations in plaintiffs' complaint are sketchy at best and do not provide us with a complete factual background in the instant case, but we are constrained to accept the facts provided in plaintiffs' complaint when ruling on demurrers. "[A] preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deducted therefrom. (Citation omitted) In determining whether to sustain a demurrer, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Giffin v. Chronister,* ___ Pa. Comwlth. ___, ___, 616 A.2d 1070, 1072 (1992).

After a thorough review of plaintiffs' complaint and the defendants' preliminary objections, we find that as a result of the numerous conclusory allegations in plaintiffs' complaint, plaintiffs have failed to set forth causes

of action under any of the 15 counts pled in the complaint. We will now address the deficiencies in these counts.

Beginning with the civil rights claims, Counts I and II of plaintiffs' complaint allege violations of plaintiffs' civil rights pursuant to 42 U.S.C. §1983. Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In order to establish a Section 1983 claim against a municipality or county, the following requirements must be met; first, there must be an allegation that the complained of action was a policy, practice, or custom of the municipality or county; second, the alleged actions of all defendants must be "under color of state law"; and third, the plaintiffs must allege the existence of a protected right entitling them to protection under the equal protection or due process clauses of the 14th Amendment.

Addressing the first requirement, whether the action is a policy or practice of the municipality, the U.S. Supreme Court in *Monell v. Department of Social Services,*

436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018 (1978) held that a municipality cannot be held liable in Section 1983 actions on the basis of respondeat superior:

> A local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983.

Monell, 436 U.S. at 694, 56 L.Ed. 2d at 638, 98 S.Ct. at 2037-2038.

In *Pembaur v. City of Cincinnati,* 475 U.S. 469, 89 L.Ed. 2d 452, 106 S.Ct. 1292 (1986), the Supreme Court further elaborated upon this reasoning and outlined specifically when a municipality can be held liable.

> Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official – even a policy-making official – has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion. (citations omitted) The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.

Pembaur, 475 U.S. at 481-483 L.Ed 2d at 464-465, 106 S.Ct. at 1299-1300.

In the instant action, there are no allegations in plaintiffs' amended complaint that Dauphin County or any of the other defendants had a policy, custom, or practice violative of any civil right or that an official with final authority to make such a policy acted on behalf of Dauphin County or any of the other defendants. Having established that plaintiffs failed to satisfy one of the requirements for a Section 1983 action, we need not reach the other two requirements. We caution plaintiffs, however, that the amended complaint fails to adequately allege that defendants were acting under color of state law or that plaintiffs have a protected right.

With respect to plaintiffs' Section 1985 claim,[4] Section 1985 proscribes conspiracies that interfere with a) the performance of official duties by federal officers, b) the administration of justice in federal courts c) the administration of justice in state courts d) the private enjoyment of "equal protection of the laws" and "equal privileges and immunities under the laws" and e) the right to support candidates in federal elections. *Kush v. Rutledge,* 460

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[4] Although plaintiffs' fail to designate which subsection of section 1985 they are relying upon, it appears that their claim is based upon section 1985(3) which provides as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . .

U.S. 719, 75 L.Ed 2d 413, 103 S.Ct. 1483 (1983). Three of these five categories clearly relate to the federal government and are inapplicable in the instant case since plaintiffs' amended complaint contains no allegations of federal involvement. Plaintiffs fail to plead with sufficient specificity, however, how the defendants have violated the other two categories concerning conspiracies to interfere with the administration of justice in state courts and the private enjoyment of equal protection under the laws.

The plaintiffs must file a detailed factual pleading to establish a cause of action under Section 1985(3). In *Fuller v. Harding*, 699 F.Supp. 64 (E.D. Pa. 1988) *aff.* 875 F.2d 310 (3d Cir. 1989) the court held that "[b]road and conclusory allegations, without some form of factual support, will not state a claim based on a conspiracy pursuant to 42 U.S.C. §1983 or §1985(3)". (citations omitted) 699 F.Supp. at 67. *See also, Fletcher v. Hook*, 446 F.2d 14 (3d Cir. 1971).

Count III of plaintiffs' amended complaint fails to satisfy the specificity requirement because it contains only conclusory allegations. Plaintiffs' complaint avers that "defendants were unlawful in that the defendants agreed to cooperate together for the unlawful purpose of depriving plaintiffs of their rights to enjoy the rights, privileges and immunities of the Constitution and laws of the United States of America pursuant to 42 U.S.C. 1985." In paragraph 47, plaintiffs also concede that they "do not know the precise dates or times of meetings among defendants at which deliberate or intentional plans to harm and injure plaintiffs . . . occurred." Plaintiffs only aver that all defendants participated in an unlawful combination for unlawful purposes, but they fail to allege which defendants were involved in the conspiracy, when

and where the meetings among defendants took place and the subject matter of such meetings.

Turning to Count IV of plaintiffs' amended complaint, plaintiffs Carter, Foster, Waters, and Manning (all African-American citizens) assert a Section 1981 claim alleging the unlawful termination of "duly executed contracts for employment with Handler." Section 1981 provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Although plaintiffs aver the existence of "duly executed contracts for employment with Handler" in paragraph 109 of the amended complaint, they fail to attach copies of the contract to the complaint. A question, therefore, clearly exists as to whether the plaintiffs had contracts or were merely at-will employees of Handler. We recognize that plaintiffs' failure to attach copies of the contracts to the complaint technically violates Rule 1019(h), but rather than relying upon a technical deficiency is deciding plaintiffs' claim, we will reach the merits of the Section 1981 claim.

Assuming that plaintiffs did have contracts with the Handler Center in 1989 and 1990, Section 1981 would still be inapplicable to the instant case because Section 1981

only prohibits refusals to enter into a contact or to offer to make a contract on discriminatory terms. In *Patterson v. McLean Credit Union*, 491 U.S. 164, 105 L.Ed 2d 132, 109 S.Ct. 2363 (1989), the Supreme Court addressed the applicability of Section 1981 to breach of contracts and held that the breach of a contract is post-formation conduct that is not actionable under Section 1981. *Patterson*, 491 U.S. at 176-177, 105 L.Ed 2d at 150-151, 109 S.Ct. at 2372-2373. *See also, Courtney v. Canyon Television and Appliance Rental*, 899 F.2d 845 (9th Cir. 1990). *Lavender v. V & B Transmission and Auto Repair*, 897 F.2d 805, 807-808 (5th Cir. 1990).

Although the Civil Rights Act was amended in 1991 to include the modification and termination of contracts, this would not affect the instant case because subsequent cases have held that the Civil Rights Act of 1991 should not be applied retroactively because such would result in manifest injustice. *Blanding v. Pennsylvania State Police*, 811 F.Supp. 1084, (E.D. Pa. 1992), *Ribando v. United Airlines, Inc.*, 787 F.Supp. 827 (N.D. Ill. 1992); *Sofferin v. American Airlines, Inc.*, 785 F.Supp. 780 (N.D. Ill. 1992). The alleged discriminatory action in this case took place between 1989 and June 15, 1990. This was clearly before the Civil Rights Act was amended in 1991, and therefore *Patterson* would be the applicable law in the instant case.

Having addressed plaintiffs' civil rights claims, we now turn to the second issue, plaintiffs' claim of civil conspiracy. In Count V, plaintiffs aver that the defendants "unlawfully agreed to defame plaintiffs and planned to deprive plaintiffs of their positions knowingly, with malice aforethought, for the unlawful purpose of causing plaintiffs' wrongful discharge and of replacing plaintiffs

in their employment, and to discriminate against and harm plaintiffs on account of their race, sex, and/or sexual preference . . . " (Paragraph 112)

This type of broad conclusory allegation will to support a claim for conspiracy. "As a rule, conspiracy must be pleaded with specificity." *Realco Services, Inc. v. Holt,* 479 F.Supp. 880, 884 (E.D. Pa. 1979). Additionally, " '[a] conspiracy claim based upon § 1985(3) requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals.' " (citations omitted) *Robinson v. McCorkle,* 462 F.2d 111, 113 (3d. Cir. 1972). In *McDermott v. Russell,* 523 F.Supp. 347 (E.D. Pa. 1981), the district court outlined the requirements for establishing a claim of conspiracy and held, "[u]nder Pennsylvania law a civil conspiracy is 'a combination of two or more persons to do an unlawful or criminal act or to do a lawful act by unlawful means or for an unlawful purpose.' " *Id.,* 523 F.Supp. at 351 (citing *Landau v. Western Pennsylvania National Bank,* 445 Pa. 217, 224, 282 A.2d 335, 341 (1971))

In the instant case, plaintiffs have clearly failed to plead material allegations sufficient to support a claim for civil conspiracy. Plaintiffs do not aver which defendants were specifically involved in the conspiracy, the dates when or the places where the defendants conspired to harm the plaintiffs, or the unlawful conduct in which the defendants supposedly participated.

With respect to the third issue, plaintiffs' eight counts alleging defamation, we find that plaintiffs have failed to establish the necessary elements to maintain causes of action for defamation against any of the defendants. A

defamation action must allege: "(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury." *Sugarman v. RCA Corp.*, 639 F.Supp. 780, 786 (M.D. Pa. 1985). (citations omitted) Additionally, a complaint for defamation must provide the requisite particularity regarding the alleged defamatory statement. *Spain v. Vicente*, 315 Pa. Super. 135, 141, 461 A.2d 833, 836 (1983).

In Counts VI-XIII, plaintiffs fail to identify the words or subjects of the alleged defamatory statements, the persons to whom these defamatory statements were published, the manner in which the communications refer to the plaintiffs, and the third party's understanding of the communications' defamatory character. Without these specific factual averments, plaintiffs have failed to state a cause of action for defamation.

Addressing the fourth issue, we find that plaintiffs' conclusory allegations fail to state a cause of action for wrongful discharge. When evaluating an action for wrongful discharge,

> the threshold inquiry is whether or not the employment was at will. If it was, then the discharge is not reviewable in a judicial forum. An exception is that the discharge will be reviewable in a judicial forum when there is sufficient evidence to suggest that it was against public policy or made with the specific intent to harm the employee.

Veno v. Meredith, 357 Pa. Super. 85, 97, 515 A.2d 571, 577 (1986).

Although the plaintiffs could here argue that they fall into the public policy exception for at will employees, since they allege that their discharge was motivated by discrimination based on race or sex; nevertheless, plaintiffs' discriminatory allegations remain conclusory in nature and are lacking in sufficient factual averments. Plaintiffs' complaint avers only that "[a]ll plaintiffs were replaced after June 15, 1990" (Paragraphs 42-43) and "[o]n June 15, 1990 all plaintiffs were summarily dismissed from their positions at Handler without just cause." (Paragraph 45)

One of the few references the plaintiffs make to defendants involves an allegation "that the forcible removal of plaintiffs from their employment and their termination of employment by the sheriff of Dauphin County constituted a wrongful discharge of plaintiffs by the defendants by virtue of the defendants take over of Handler." (Paragraph 92) The sheriff, however, was acting pursuant to a supplemental order of court issued by Judge Buckingham on June 15, 1990 (4880 Equity 1990) when plaintiffs claim that they were "forcibly removed" from the Handler Center. The order of June 15, 1990 provided as follows:

> The Sheriff of Dauphin County is hereby authorized, upon request by either party to take such action as may be necessary to enforce both this Supplemental Order and such other orders as are entered without further direction by the Court, including, but not limited to, the safety and security of the personnel essential to the performance or the execution of this Order, and the property of the County of Dauphin, and the

> defendant and all premises within which the same is occupied and located.

The sheriff's actions, therefore, did not constitute the wrongful discharge of the plaintiffs. The plaintiffs have failed to specifically allege what actions were taken by the defendants which resulted in the plaintiffs' wrongful discharge.

Additionally, there are no allegations in plaintiffs' amended complaint that the plaintiffs received notice of their termination from any of the defendants. Plaintiffs only aver that as a result of threats from the defendants, the Handler Board dissolved the Handler Center (Paragraph 86). Plaintiffs also fail to aver that any of them applied for work at Dauphin County after June 15, 1990 or that any of them returned to work on June 18, 1990 and were refused employment.

The final issue concerns whether plaintiffs have stated a cause of action under the Harrisburg Human Relations ordinance. The Harrisburg city ordinance concerning "Human Relations and Discrimination", Article 725, Codified Ordinances of the City of Harrisburg, Ord. 6-1983, March 8, 1983, as amended does not provide for a private cause of action in the Court of Common Pleas except in connection with the enforcement of an order first being issued by the Harrisburg Human Relations Commission. Section 725.15, concerning enforcement and judicial review, provides as follows:

> 725.15 Enforcement and Judicial Review.
>
> The complainant, the City Solicitor or the Commission may secure enforcement of the order of the Commission or other appropriate

> relief by the Court of Common Pleas of Daughin County. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in such court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of such petition as in proceedings in equity. When enforcement of a commission order is sought, the court may make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, an order or decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Commission, and the jurisdiction of the court shall not be limited by acts pertaining to equity jurisdiction of the courts. An appeal may be taken as in other civil actions.

In the instant case, plaintiffs have not averred that an order was issued from the Commission, and therefore the plaintiffs have failed to set forth a cause of action pursuant to the Harrisburg Human Relations ordinance.

Although plaintiffs have failed to state causes of action under any of their fifteen counts, we will give plaintiffs leave to amend their complaint with respect to those counts capable of being cured by amendment. In *Framlau Corporation v. Delaware County*, 223 Pa. Super. 272, 276, 299 A.2d 335, 337 (1972), the court noted

> "[i]n the event a demurrer is sustained because a complaint is defective in stating a cause of action, if it is evident that the pleading can be cured by amendment, a court may not enter final judgment, but must give the pleader an opportunity to file an amended complaint.

(citation omitted) This is not a matter of discretion with the court but rather a positive duty."

Plaintiffs are given leave to amend all of the courts in their amended complaint except Count IV. Relying upon the reasoning in *Patterson, supra,* this court finds that there are no set of facts which plaintiffs could allege which would enable them to state a cause of action as a matter of law pursuant to Section 1981.

For the foregoing reasons we enter the following

ORDER

AND NOW, this 20th day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. § 1983. Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. § 1981.

BY THE COURT:

/s/ Joseph H. Kleinfelter
Joseph H. Kleinfelter, Judge

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, and RODGER L. BEATTY,	:	IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY, PENNSYLVANIA
Plaintiffs	:	NO. 2271 S 1992
vs.	:	
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICCOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, Individually; BOSWELL, SNYDER, TINTNER & PICCOLA, a law firm, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION CASE MANAGEMENT UNIT and DAUPHIN COUNTY MENTAL HEALTH & MENTAL RETARDATION COUNSELLING, PRIVATE CORPORATIONS and DAUPHIN COUNTY, a local government entity.	:	CIVIL ACTION – LAW
Defendants	:	

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

ORDER

AND NOW, this 20th day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. § 1983. Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. § 1981.

BY THE COURT:

/s/ Joseph H. Kleinfelter
Joseph H. Kleinfelter, Judge

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APPENDIX B

PENNSYLVANIA RULE OF CIVIL PROCEDURE 1019

RULE 1019. CONTENTS OF PLEADINGS. GENERAL AND SPECIFIC AVERMENTS

(a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.

(b) Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally.

(c) In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of such performance or occurrence shall be made specifically, and with particularity.

(d) In pleading an official document or official act, it is sufficient to identify it by reference and aver that the document was issued or the act done in compliance with law.

(e) In pleading a judgment, order or decision of a domestic or foreign court, judicial or administrative tribunal, or board, commission or officer; it is sufficient to aver the judgment, order or decision without setting forth matter showing jurisdiction to render it.

(f) Averments of time, place and items of special damage shall be specifically stated.

(g) Any part of a pleading may be incorporated by reference in another part of the same pleading or in

another pleading in the same action. A party may incorporate by reference any matter of record in any State or Federal court of record whose records are within the county in which the action is pending, or any matter which is recorded or transcribed verbatim in the office of the prothonotary, clerk of any court of record, recorder of deeds or register of wills of such county.

(h) A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to him, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

APPENDIX C

EMPLOYEES OF ROSALIE G. HANDLER CENTER AND SUCCESSOR AGENCIES BY RACE AND GENDER

Non-Returning Employees of the Rosalie G. Handler Center as Listed in the Final Settlement Agreement Dated July 24, 1990

Name	Race
Deborah Alger	W
Roger Beatty	W
Diann Harris-Carter	B
Cathy Consla	W
Joanna Foster	B
David Fyke	W
Debra Good	W
Mary Kinsinger	W
Zoe Klinger	W
Richard Laban	W
Marilyn Lovell	W
Margie MacDonald	H
Rosemary Madl	W
Frances Manning	W
Gwendolyn Towles-Manning	B
Lisa Minner	B
Carol Omiros	W
Matthew Riley	W
Joan Shank	W
Joan Schuck	W
Joyce Waters	B
Yolanda Waters	B

Totals: 22
15 White
6 Black
1 Hispanic

Black Employees Returning to Work on June 18, 1990

The following lists set forth the names of those black employees of the Rosalie G. Handler Center as of Friday, June 15, 1990 who either returned to work or did not return to work on Monday morning, June 18, 1990:

Returned	Failed to Return
1. Joseph Sackey	1. Diann Harris Carter
2. Tammy Wright	2. Joanna Foster
3. Larry Dyson	3. Gwendolyn Towles-Manning
4. Bryant Haynes	4. Joyce Waters
5. Sharon Carey	5. Yolanda Waters
6. Barbara Tatum	6. Lisa Minner
7. James Graham	
8. Stacey Baxley	
9. Thomas Moore	
10. Sandy Lee Jones	

1. Rosalie G. Handler Center Employees, by Race as of June 15, 1990

Alger	W	Graham	B	Pelton	W
Baxley	B	Graybill	W	Piccio	W
Beahm	W	Harrison	W	Rissinger	W
Beatty	W	Haynes	B	Riley	W
Bostdorf	W	Jones	B	Robinski	W
Boyer	W	Leban	W	Sacky	B
Brandt	W	Lenker	W	Sausman	W
Brown	W	Jenkins	W	Schuck	W
Bufflap	W	Kessler	W	Segal	W
Carey	W	Kinsinger	W	Shank, J.	W
Carl	W	Kistler	W	Shoop	W
Carter	B	Klinger	W	Tatum	B
Cassell	W	Kraft	W	Teeter	W
Christ	W	Lovell	W	Vogl	W
Clark	W	MacDonald	H	Walker	W
Consla	W	Madl	W	Waters, J.	B
Dunlap	W	Magel	W	Waters, Y.	B
Dyson	B	Manning, F.	W	Wentworth	W
Flemming	W	Manning, G.	B	White	W
Foster	B	Meyer	W	Wright	B
Fyke	W	Minner	B	Young	B
Gantt	W	Motter	W	Zeiders	W
Gomez	H	Moore	B	Zug, B.	W
Good	W	Nester	W	Zug, S.	W
Grady	B	Omiros	W		

Total: 74
White: 57 (77%) Black: 15 (20%) Hispanic: 2 (3%)

2. Rosalie G. Handler Center Employees, by Race Separated During the Period April 1 – June 15, 1990

Appleberry	B	Minnix	W
Bard	W	Reil	W
Collura	W	Stauffer	W
Jumper	W	Urban	W
Litzelman	W		

Total: 9 White: 8 Black: 1

COMBINED TOTAL: 83 White: 65 (79%) Black: 15 (18%)
Hispanic: 2 (3%)

---

1. Dauphin County Case Management Unit, Inc. Case Management Employees by Race As of September 21, 1990

Backstrom	W	Gomez	H	Shade	W
Bayne	W	Grady	B	Shenk	W
Bard	W	Graybill	W	Shoop	W
Beahm	W	Harrison	W	Smith	W
Boatright	W	Haynes	B	Tatum	B
Bostdorf	W	Jones	W	Teeter	W
Brown, L.	W	Jumper	W	Urban	W
Bufflap	W	Kessler	W	Vogel	W
Carl	W	Kraft	W	Walker	W
Carey	W	Krow	W	Weader	W
Carter	B	Lenker	W	Wentworth	W
Cassell	W	Magel	W	White	W
Clark	W	Meyer	W	Whittaker	B
Dunbar	B	Mollino	H	Wright	B
Dunlap	W	Motter	W	Vercher	B
Dyson	B	Reid	B	Wilshire	W

Farrell	W	Reisinger	W	Young	W
Flemming	W	Reisinger	W	Brown, B.	B
Felty	W	Sausman	W	Zug, S.	W
Gantt	W	Segal	W	Parmer	B

Total: 60

White: 46 (77%) Black: 12 (20%) Hispanic: 2 (3%)

2. Edgewater Psychiatric Center Partial Hospitalization Employees by Race As of September 15, 1990

Acri	W	Jones	B
Baxley	B	McGrath	W
Chan C		Moore	B

Total: 6

White: 2 (33%) Black: 3 (50%) Chinese: 1 (7%)

---

3. Mental Health Association of Cumberland/ Dauphin/Perry Counties Outpatient Employees by Race As of September 15, 1990

Jenkins	W
Zug, B.	W

Total: 2 White

COMBINED TOTAL OF THREE PROGRAMS: 68

White: 50 (74%) Black: 15 (22%) Other: 3 (4%)

Rosalie G. Handler Center Management Staff by Race and Sex as of June 15, 1990

Beatty	W M	Lovell	W F	Shuck	W F
Boyer	W F	Madl	W F	Urban	W F
Carter	B F	Manning, F.	W F	Waters	B F
Foster	B F	Manning, G.	B F	Laban	W M

Black: 33%
Female: 83%

Management Staff at Successor Agencies by Race and Sex as of September 15, 1990

Boatright	B F	McGrath	W F	Walker	W F
Gantt	W F	Sausman	W M	Weader	W F
Krow	W M	Urban	W F	Wright	B F

Black: 22%
Female: 78%

Supreme Court, U.S.
FILED
MAR 15 1996

NO. 95-1291

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

DIANN HARRIS CARTER, et al.,
Petitioners

v.

STANLEY MROZOWSKI, et al.,
Respondents.

On Writ of Certiorari to the Pennsylvania Supreme Court

BRIEF OF RESPONDENTS GARY BEESE AND LARRY DECKER IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

THOMAS W. CORBETT, JR.
Attorney General

** CALVIN R. KOONS
Senior Deputy Attorney General

GWENDOLYN T. MOSLEY
Senior Deputy Attorney General

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** Counsel of Record

QUESTION PRESENTED

Whether the state courts correctly concluded that the second amended complaint failed to state federal claims.

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STATEMENT OF THE CASE

Petitioners, ten former employees of the Rosalie G. Handler Center, a facility which provided mental health/mental retardation services pursuant to contract with the Pennsylvania Department of Public Welfare, have petitioned the Court to grant certiorari to reverse a decision of the Pennsylvania Commonwealth Court affirming the trial court's dismissal of their second amended complaint for failure to state a claim.

1. Petitioners brought their action in state court against an assortment of defendants which included former employees of the Handler Center, county employees, private health care providers, a state representative, and a law firm. The complaint also named two employees of the State Department of Public Welfare, Gary Beese and Larry Decker, on whose behalf this brief is filed. The complaint asserted claims pursuant to 42 U.S.C. §§ 1981, 1983, and 1985 as well as numerous state law claims in connection with petitioners' loss of employment at the Handler Center. After petitioners filed an amended complaint dropping one of the defendants, the remaining defendants preliminarily objected to the complaint for failure to state a claim. The trial court sustained the objections but granted leave to amend all counts of the complaint except those alleging violations of 42 U.S.C. §1981. Citing *Patterson v. McLean, 491 U.S. 164 (1989)*, the court concluded that at best the complaint alleged a breach of contract claim which was not actionable under Section 1981. App. 10a-12a.[1] The court noted that the complaint was in technical violation of a state

[1]Citations to the trial court's first opinion and to the second amended complaint, neither of which were included in the appendix to the petition, are to the appendix attached to this brief.

rule which required that the contracts in issue be attached to the complaint, but explicitly declined to base its decision on the rule rather than on the merits of the federal claim. App. 11a.

With respect to the other federal claims, the court found the complaint similarly deficient. The court held that the conspiracy claims pleaded pursuant to 42 U.S.C. §1985 were too conclusory to satisfy the standard explained in *Fuller v. Harding, 699 F.Supp. 64 (E.D.Pa. 1988) affirmed, 75 F.2d 310 (3d Cir. 1989)* and *Fletcher v. Hook, 446 F.2d 14 (3d Cir. 1971)*, and that the Section 1983 claims were deficient as to the County defendants under *Monell v. Department of Social Services, 436 U.S. 658 (1978)* and *Pembaur v. City of Cincinnati, 475 U.S. 469 (1986)* for failure to allege a policy, practice, or custom violative of civil rights. App. 6a-10a. The court also cautioned that "the amended complaint fails to adequately allege that defendants were acting under color of state law or that plaintiffs have a protected right." App. 8a. Lastly, the court held that petitioners had failed to state a claim under the state law counts alleging civil conspiracy, defamation, wrongful discharge, and violations of a city human relations ordinance. App. 12a-17a.

2. Given leave to amend, petitioners filed a forty page, second amended complaint pleaded in one hundred forty-five paragraphs. App. 20a-55a. The second amended complaint, like the first one, implied a massive conspiracy among the defendants to defame the petitioners in order to bring about the closing of the Handler Center to benefit competing health care providers, defendant Edgewater Psychiatric Center and Northwestern Corporation. Petitioners alleged, for example, that "the defendant Edgewater needed, inter alia, the partial program at Handler

to survive financially, and this was well known to the defendants herein and was consistently pursued by them for Edgewater at the behest of Northwestern", App. 34a., and that the defendants defamed plaintiffs to effect the acquisition and control of Handler's service, and "because plaintiffs were black, female, and in certain cases gay and or lesbian." App. 34a-35a. Of defendants Beese and Decker, the only two state employees named in the complaint, it was alleged only that they "supported the unlawful actions of the defendants, knowingly, through the exaggerated use of [their] authority over licensing procedures in Pennsylvania to infer, imply, and otherwise create grounds for the other defendants ... to charge mismanagement at Handler." App. 30a.

All respondents again preliminarily objected to the complaint as amended. Sustaining the objections and dismissing all federal and state claims pleaded in the second amended complaint, the trial court referred to the standards set forth in its earlier opinion and cited the same and additional federal cases. Pet. App. 11a-12a. The court concluded that the amended complaint merely added conclusory phrases like "state power" and "under color of state law" and did not contain "facts setting forth a policy, practice, or custom of the state, or allegations as to how any of the actions of any of the defendants were under color of state law or led to the deprivation of federally protected rights." Pet. App. 12a. The court concluded that "there could be no recovery under Section 1983, even accepting as true every well pleaded, material fact set forth by plaintiffs." Id. The court dismissed the Section 1985 claim because it did not meet the "detailed factual pleading" standard which the court understood to be required by federal law. Pet. App. 12a-13a, and also dismissed the remaining state claims.

3. Petitioners appealed to Commonwealth Court and raised in that court for the first time the issue they frame in their petition. Commonwealth Court rejected their arguments and affirmed the judgment of the trial court, concluding that state, not federal pleading requirements applied to the case, and, citing federal caselaw, concurring with the trial court in holding that the second amended complaint failed to state claims under Section 1983 and Section 1985. Pet. App. 4a-5a. The Pennsylvania Supreme Court refused to grant petitioners' petition for allowance of appeal, and they thereafter petitioned for writ of certiorari.

REASONS FOR DENYING THE WRIT

THIS CASE DOES NOT MERIT REVIEW BY THE COURT

This case does not present any significant or important issues to justify review by the Court. Petitioners attempt to present the case as one in which valid federal claims filed in state court have been defeated by technical rules of state practice. In this they are mistaken. This is not a case like *Felder v. Casey, 487 U.S. 131 (1988)*, in which the Court held that state notice of claim requirements could not bar federal claims filed in state court. Nor is it a case like *Brown v. Western Railway of Alabama, 338 U.S. 294 (1950)*, upon which petitioners principally rely, in which the Court said that a state rule requiring that a pleading be construed strongly against the pleader could not be used to defeat an otherwise colorable federal claim. Rather, this is a case in which a state court was confronted with an incomprehensible complaint pleading a variety of federal and state claims against state, county, and private individual and corporate defendants. The court analyzed the federal claims under federal statutory and decisional law as it understood it, explained the deficiencies it perceived, and granted the petitioners leave to amend to correct them. The court then dismissed the amended complaint not because of technical deficiencies in pleading, but because it concluded that, even accepting all pleaded facts as true, the complaint failed to state the most basic elements of a federal claim. In this the court was quite correct, and the petition for writ of certiorari should be denied.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

THOMAS W. CORBETT, JR.
Attorney General

CALVIN R. KOONS
Senior Deputy Attorney General

GWENDOLYN T. MOSLEY
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DATED: March 15, 1996

APPENDIX

IN THE COURT OF COMMON PLEAS
FOR DAUPHIN COUNTY PENNSYLVANIA

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DEBORAH ALGER, FRANCES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, AND RODGER L. BEATTY	: CIVIL ACTION - LAW : : : : : : : : 2271 - 8 - 1992
Plaintiffs	:
V.	:
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICCOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, INDIVIDUALLY; BOSWELL, SNYDER, TITNER, & PICCOLA, A LAW FIRM, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION	: : : : : : : : : : : : : : : : : : : :

CASE MANAGEMENT UNIT	:	
AND DAUPHIN COUNTY	:	JUDGE KLEINFELTER
MENTAL HEALTH AND	:	
MENTAL RETARDATION	:	
COUNSELLING, PRIVATE	:	
CORPORATIONS, AND	:	
DAUPHIN COUNTY A LOCAL	:	
GOVERNMENT ENTITY	:	JURY TRIAL DEMANDED
	:	
Defendants	:	

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

OPINION

This matter comes before the court on defendants' preliminary objections to plaintiffs' complaint. The instant action arises from Dauphin County's decision not to renew its contract with the Rosalie G. Handler Center,contract with the Rosalie G. Handler Center, a provider of mental health and mental retardation services. The facts in this case were difficult to ascertain as a result of the skeletal and conclusory nature of plaintiffs' complaint, but we have been able to glean the following facts from plaintiffs' complaint.

The amended complaint[1] alleges that the plaintiffs[2] were all employed in various positions at the Rosalie G. Handler Center

---

[1]Plaintiffs' original complaint was filed on June 3, 1992. An amended complaint was filed on June 4, 1992. The only difference between the original and amended complaints was that one of the named plaintiffs, Lucy Bibby, was dropped from the action.

[2]Plaintiffs are Diann Carter, Joanna Foster, Joyce Waters, Gwendolyn Manning, Lucy Bibby, Deborah Alger, Frances Manning, Dr. Rosemary Madl, Marilyn Lovell, Cathy Consla, and Rodger Beatty.

until their dismissal on June 15, 1990. Plaintiffs aver that they were dismissed because of their race, sex and/or sexual orientation and were replaced by white males, all of whom were not homosexual, and were less qualified and capable than the plaintiffs. Plaintiffs state that their rights to substantive and procedural due process and equal protection of the laws were violated by the defendants[3], who were government employees acting under color of state law, and who illegally agreed among themselves to destroy, harass, and defame plaintiffs because of their race, sex or sexual orientation.

In the amended complaint, plaintiffs claim that they do not know the precise dates or times when the defendants conducted meetings to discuss their plans to harm the plaintiffs and destroy the Handler Center, but that "an unlawful combination for unlawful purposes was participated in by all defendants" from 1989 until June 15, 1990. (Paragraph 47) Plaintiffs continue by alleging that defendants Stanley Mrozowski, Administrator of the Dauphin County Mental Health & Mental Retardation Program, and Ralph Moyer, Director of Dauphin County Human Services, both made defamatory statements with respect to the conduct and qualifications

---

[3]Defendants are Stanley Mrozowski, Administrator, Dauphin County Mental Health and Mental Retardation Program; Ralph Moyer, Director of Dauphin County Human Services; Jeffrey Piccola, State Representative and member of the law firm of Boswell, Snyder, Tintner & Piccola; John Thomas, a social worker at Edgewater Psychiatric Center; Dahl Krow, a contract monitor for Dauphin County; Mark Barton, a mental health specialist for Dauphin County, Gary Beese, a manager for the Office of Mental Health Mental Retardation of the Department of Public Welfare; Larry Decker, an employee of the Department of Public Welfare; Deborah Gantt, Sandy Reisinger, and Kelly Dunlap, case managers at Rosalie G. Handler Center; Patricia Bard and Wendy Minnix, therapists at Rosalie G. Handler Center; Lynn Loomis, a case management supervisor at the Handler Center; Irene Urban, the fiscal coordinator at the Handler Center; Boswell, Snyder, Tintner & Piccola, the Edgewater Psychiatric Center, the Northwestern Corporation, the Dauphin County Mental Health and Mental Retardation Counseling and Dauphin County.

of the plaintiffs in an effort to discredit them, knowing the statements to be untrue. The amended complaint avers that defendant Moyer made the statement "we're going to get rid of them", referring to plaintiffs, to Dauphin County Commissioner Peters in early 1990. (Paragraph 51)

Plaintiffs also claim that defendants Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban, all employees of the Handler Center, made defamatory statements attacking their supervisors, knowing that their accusations were false. (Paragraphs 58-64) According to the complaint, defendant Jeffrey Piccola, a member of the Harrisburg law firm of Boswell, Snyder, Tintner & Piccola, carried these defamatory statements, which were unverified, to the floor of the Pennsylvania House of Representatives, where he made reference to them and discussed them with reporters for the Harrisburg Patriot News.

Additionally, defendants Larry Decker, a DPW-OMH Licensure representative for the DPW Central Regional Office, and Gary Beese, a community program manager for the Commonwealth of Pennsylvania Community Mental Health Services, are alleged to have used their authority over licensing procedures in Pennsylvania to create grounds for defendants Mrozowski, Moyer, DCMHC, and Dauphin County to charge mismanagement at Handler. Plaintiffs also aver that defendant Thomas, an employee of defendant, Edgewater Psychiatric Hospital, generated false reports of mismanagement at Handler by claiming that defendant Foster, an employee at the Handler Center, was not attending after-care follow-up meetings. Plaintiffs claim that all of the above defamatory statements were made by the defendants in an effort to establish that Handler was mismanaged so that Edgewater Psychiatric Center, which was in serious financial difficulty from 1988 through June 15, 1990, could gain access and control of Handler's partial program and case management resources.

Dauphin County notified the Handler Center that it would not be renewing its contract upon its expiration on June 30, 1990. On June 15, 1990, Judge James Buckingham issued orders authorizing Dauphin County to have the full use and occupancy of all premises leased, owned or occupied by the Handler Center. The order also transferred all county owned equipment and supplies, including client files and. records, from Handler to the county. (See Order, Supplemental Order and Third Supplemental Order, 4880 Equity 1990)

As a result of the above court order, plaintiffs claim that they were physically forced out of their offices without warning and their rights to be secure in their person and property were violated. Plaintiffs' complaint alleges that the Handler Board was told that if it failed to sign over all of its assets immediately, criminal charges would be brought against one of the plaintiffs, Dr. Rosemary Madl. Plaintiffs claim that the Handler Board dissolved the Rosalie Handler Center in July 1992 as a result of defendant Piccola and other defendants publicly proclaiming that "the Handler Board is rotten to the core." (Paragraph 86)

Plaintiffs' complaint consists of fifteen counts. Counts I & II allege violations of civil rights pursuant to 42 U.S.C. §1983. Counts III and IV aver violations of civil rights pursuant to 42 U.S.C. §1985 and 42 U.S.C. §1981. Count V is a claim for civil conspiracy to defame plaintiffs. Counts VIXIII are all claims for defamation. Count XIV is an allegation of wrongful discharge. Finally, Count XV alleges a violation of Harrisburg Ordinance 6-1983. All of the defendants filed preliminary objections in the nature of demurrers and motions for more specific pleadings.

The issues before this court are as follows: (1) Does plaintiffs' complaint state a cause of action against any of the defendants for violation of their civil rights pursuant to 42 U.S.C. §1983, 42 U.S.C. §1985, or 42 U.S.C. §1981? (2) Can plaintiffs

set forth a cause of action for civil conspiracy? (3) Have plaintiffs alleged a cause of action against any of the defendants for defamation? (4) Does plaintiff's complaint state a cause of action for wrongful discharge? (5) Have plaintiffs alleged a violation of Harrisburg Ordinance 6-1983?

The factual allegations in plaintiffs' complaint are sketchy at best and do not provide us with a complete factual background in the instant case, but we are constrained to accept the facts provided in plaintiffs' complaint when ruling on demurrers. "[A] preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deducted therefrom. (Citation omitted) In determining whether to sustain a demurrer, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." Giffin v. Chronister, ___ Pa. Cmwlth. ___, ___, 616 A.2d 1070, 1072 (1992).

After a thorough review of plaintiffs' complaint and the defendants' preliminary objections, we find that as a result of the numerous conclusory allegations in plaintiffs' complaint, plaintiffs have failed to set forth causes of action under any of the 15 counts pled in the complaint. We will now address the deficiencies in these counts.

Beginning with the civil rights claims, Counts I and II of plaintiffs' complaint allege violations of plaintiffs' civil rights pursuant to 42 U.S.C. §1983. Section 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or

> immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In order to establish a Section 1983 claim against a municipality or county, the following requirements must be met; first, there must be an allegation that the complained of action was a policy, practice, or custom of the municipality or county; second, the alleged actions of all defendants must be "under color of state law"; and third, the plaintiffs must allege the existence of a protected right entitling them to protection under the equal protection or due process clauses of the 14th Amendment.

Addressing the first requirement, whether the action is a policy or practice of the municipality, the U.S. Supreme Court in Monell v. Department of Social Services, 436 U.S. 658, 56 L.Ed. 2d 611, 98 S.Ct. 2018 (1978) held that a municipality cannot be held liable in Section 1983 actions on the basis of respondeat superior:

> A local government may not be sued under §1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under §1983.

Monell, 436 U.S. at 694, 56 L.Ed. 2d at 638, 98 S.Ct. at 20372038.

In Pembaur v. City of Cincinnati, 475 U.S. 469, 89 L.Ed. 2d 452, 106 S.Ct. 1292 (1986), the Supreme Court further elaborated upon this reasoning and outlined specifically when a municipality can be held liable.

> Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official - even a policy-making official - has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion. (citations omitted) The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.

Pembaur, 475 U.S. at 481-483 L.Ed 2d at 464-465, 106 S.Ct. at 1299-1300.

In the instant action, there are no allegations in plaintiffs' amended complaint that Dauphin County or any of the other defendants had a policy, custom, or practice violative of any civil right or that an official with final authority to make such a policy acted on behalf of Dauphin County or any of the other defendants. Having established that plaintiffs failed to satisfy one of the requirements for a Section 1983 action, we need not reach the other two requirements. We caution plaintiffs, however, that the amended complaint fails to adequately allege that defendants were acting under color of state law or that plaintiffs have a protected right.

With respect to plaintiffs' Section 1985 claim,[4] Section 1985 proscribes conspiracies that interfere with a) the performance of official duties by federal officers, b) the administration of justice in federal courts c) the administration of justice in state courts d) the private enjoyment of "equal protection of the laws" and "equal privileges and immunities under the laws" and e) the right to support candidates in federal elections. Kush v. Rutledge, 460 U.S. 719, 75 L.Ed 2d 413, 103 S.Ct. 1483 (1983). Three of these five categories clearly relate to the federal government and are inapplicable in the instant case since plaintiffs' amended complaint contains no allegations of federal involvement. Plaintiffs fail to plead with sufficient specificity, however, how the defendants have violated the other two categories concerning conspiracies to interfere with the administration of justice in state courts and the private enjoyment of equal protection under the laws.

The plaintiffs must file a detailed factual pleading to establish a cause of action under Section 1985(3). In Fuller v. Harding, 699 F.Supp. 64 (E.D. Pa. 1988) aff. 875 F.2d 310 (3d Cir. 1989) the court held that "[b]road and conclusory allegations, without some form of factual support, will not state a claim based on a conspiracy pursuant to 42 U.S.C. §1983 or §1985(3)".

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[4]Although plaintiffs' fail to designate which subsection of section 1985 they are relying upon, it appears that their claim is based upon section 1985(3) which provides as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunites [sic] under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ...

(citations omitted) 699 F.Supp. at 67. See also, Fletcher v. Hook, 446 F.2d 14 (3d Cir. 1971).

Count III of plaintiffs' amended complaint fails to satisfy the specificity requirement because it contains only conclusory allegations. Plaintiffs' complaint avers that "defendants were unlawful in that the defendants agreed to cooperate together for the unlawful purpose of depriving plaintiffs of their rights to enjoy the rights, privileges and immunities of the Constitution and laws of the United States of America pursuant to 42 U.S.C. 1985." In paragraph 47, plaintiffs also concede that they "do not know the precise dates or times of meetings among defendants at which deliberate or intentional plans to harm and injure plaintiffs ... occurred." Plaintiffs only aver that all defendants participated in an unlawful combination for unlawful purposes, but they fail to allege which defendants were involved in the conspiracy, when and where the meetings among defendants took place and the subject matter of such meetings.

Turning to Count IV of plaintiffs' amended complaint, plaintiffs Carter, Foster, Waters, and Manning (all AfricanAmerican citizens) assert a Section 1981 claim alleging the unlawful termination of "duly executed contracts for employment with Handler." Section 1981 provides as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Although plaintiffs aver the existence of "duly executed contracts for employment with Handler" in paragraph 109 of the amended complaint, they fail to attach copies of the contract to the complaint. A question, therefore, clearly exists as to whether the plaintiffs had contracts or were merely at-will employees of Handler. We recognize that plaintiffs' failure to attach copies of the contracts to the complaint technically violates Rule 1019(h), but rather than relying upon a technical deficiency in deciding plaintiffs' claim, we will reach the merits of the Section 1981 claim.

Assuming that plaintiffs did have contracts with the Handler Center in 1989 and 1990, Section 1981 would still be inapplicable to the instant case because Section 1981 only prohibits refusals to enter into a contract or to offer to make a contract on discriminatory terms. In Patterson v. McLean Credit Union, 491 U.S. 164, 105 L.Ed 2d 132, 109 S.Ct. 2363 (1989), the Supreme Court addressed the applicability of Section 1981 to breach of contracts and held that the breach of a contract is post-formation conduct that is not actionable under Section 1981. Patterson, 491 U.S. at 176-177, 105 L.Ed 2d at 150-151, 109 S.Ct. at 2372-2373. See also, Courtney v. Canyon Television and Appliance Rental, 899 F.2d 845 (9th Cir. 1990), Lavender v. V & B Transmission and Auto Repair, 897 F.2d 805, 807-808 (5th Cir. 1990).

Although the Civil Rights Act was amended in 1991 to include the modification and termination of contracts, this would not affect the instant case because subsequent cases have held that the Civil Rights Act of 1991 should not be applied retroactively because such would result in manifest injustice. Blanding v Pennsylvania State Police, 811 F.Supp. 1084, (E.D. Pa. 1992), Ribando v. United Airlines, Inc., 787 F.Supp. 827 (N.D. Ill. 1992); Sofferin v. American Airlines, Inc., 785 F.Supp. 780 (N.D. Ill. 1992). The alleged discriminatory action in this case took place between 1989 and June 15, 1990. This was clearly before the Civil

Rights Act was amended in 1991, and therefore Patterson would be the applicable law in the instant case.

Having addressed plaintiffs' civil rights claims, we now turn to the second issue, plaintiffs' claim of civil conspiracy. In Count V, plaintiffs aver that the defendants unlawfully agreed to defame plaintiffs and planned to deprive plaintiffs of their positions knowingly, with malice aforethought, for the unlawful purpose of causing plaintiffs' wrongful discharge and of replacing plaintiffs in their employment, and to discriminate against and harm plaintiffs on account of their race, sex, and/or sexual preference ..." (Paragraph 112)

This type of broad conclusory allegation will not support a claim for conspiracy. "As a rule, conspiracy must be pleaded with specificity." Realco Services, Inc. v. Holt, 479 F.Supp. 880, 884 (E.D. Pa. 1979). Additionally, "'[a] conspiracy claim based upon §1985(3) requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals."' (citations omitted) Robinson v. McCorkle, 462 F.2d 111, 113 (3d. Cir. 1972). In McDermott v. Russell, 523 F.Supp. 347 (E.D. Pa. 1981), the district court outlined the requirements for establishing a claim of conspiracy and held, "[u]nder Pennsylvania law a civil conspiracy is 'a combination of two or more persons to do an unlawful or criminal act or to do a lawful act by unlawful means or for an unlawful purpose."' Id., 523 F.Supp. at 351 (citing Landau v. Western Pennsylvania National Bank, 445 Pa. 217, 224, 282 A.2d 335, 341 (1971))

In the instant case, plaintiffs have clearly failed to plead material allegations sufficient to support a claim for civil conspiracy. Plaintiffs do not aver which defendants were specifically involved in the conspiracy, the dates when or the places where the defendants conspired to harm the plaintiffs, or the unlawful conduct in which the defendants supposedly participated.

With respect to the third issue, plaintiffs' eight counts alleging defamation, we find that plaintiffs have failed to establish the necessary elements to maintain causes of action for defamation against any of the defendants. A defamation action must allege: "(1) the defamatory character of the communication; (2) publication; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury." Sugarman v. RCA Corp., 639 F.Supp. 780, 786 (M.D. Pa. 1985). (citations omitted) Additionally, a complaint for defamation must provide the requisite particularity regarding the alleged defamatory statement. Spain v. Vicente, 315 Pa. Super. 135, 141, 461 A.2d 833, 836 (1983).

In Counts VI - XIII, plaintiffs fail to identify the words or subjects of the alleged defamatory statements, the persons to whom these defamatory statements were published, the manner in which the communications refer to the plaintiffs, and the third party's understanding of the communications' defamatory character. Without these specific factual averments, plaintiffs have failed to state a cause of action for defamation.

Addressing the fourth issue, we find that plaintiffs' conclusory allegations fail to state a cause of action for wrongful discharge. When evaluating an action for wrongful discharge,

> the threshold inquiry is whether or not the employment was at will. If it was, then the discharge is not reviewable in a judicial forum. An exception is that the discharge will be reviewable in a judicial forum when there is sufficient evidence to suggest that it was against public policy or made with the specific intent to harm the employee.

Veno v. Meredith, 357 Pa. Super. 85, 97, 515 A.2d 571, 577 (1986).

Although the plaintiffs could here argue that they fall into the public policy exception for at will employees, since they allege that their discharge was motivated by discrimination based on race or sex; nevertheless, plaintiffs' discriminatory allegations remain conclusory in nature and are lacking in sufficient factual averments. Plaintiffs' complaint avers only that "[a]ll plaintiffs were replaced after June 15, 1990" (Paragraphs 42-43) and "[o]n June 15, 1990 all" plaintiffs were summarily dismissed from their positions at Handler without just cause.it (Paragraph 45)

One of the few references the plaintiffs make to defendants involves an allegation "that the forcible removal of plaintiffs from their employment and their termination of employment by the sheriff of Dauphin County constituted a wrongful discharge of plaintiffs by the defendants by virtue of the defendants take over of Handler." (Paragraph 92) The sheriff, however, was acting pursuant to a supplemental order of court issued by Judge Buckingham on June 15, 1990 (4880 Equity 1990) when plaintiffs claim that they were "forcibly removed" from the Handler Center. The order of June 15, 1990 provided as follows:

> The Sheriff of Dauphin County is hereby authorized, upon request by either party to take such action as may be necessary to enforce both this Supplemental Order and such other Orders as are entered without further direction by the Court, including, but not limited to, the safety and security of the personnel essential to the performance or the execution of this Order, and the property of the County of Dauphin, and the defendant and all premises within which the same is occupied and located.

The sheriff's actions, therefore, did not constitute the wrongful discharge of the plaintiffs. The plaintiffs have failed to specifically

allege what actions were taken by the defendants which resulted in the plaintiffs' wrongful discharge.

Additionally, there are no allegations in plaintiffs' amended complaint that the plaintiffs received notice of their termination from any of the defendants. Plaintiffs only aver that as a result of threats from the defendants, the Handler Board dissolved the Handler Center (Paragraph 86). Plaintiffs also fail to aver that any of them applied for work at Dauphin County after June 15, 1990 or that any of them returned to work on June 18, 1990 and were refused employment.

The final issue concerns whether plaintiffs have stated a cause of action under the Harrisburg Human Relations ordinance. The Harrisburg city ordinance concerning "Human Relations and Discrimination", Article 725, Codified Ordinances of the City of Harrisburg, Ord. 6-1983, March 8, 1983, as amended does not provide for a private cause of action in the Court of Common Pleas except in connection with the enforcement of an order first being issued by the Harrisburg Human Relations Commission. Section 725.15, concerning enforcement and judicial review, provides as follows:

> 725.15 Enforcement and Judicial Review.
>
> The complainant, the City Solicitor or the Commission may secure enforcement of the order of the Commission or other appropriate relief by the Court of Common Pleas of Dauphin County. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in such court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of such petition as in proceedings

> in equity. When enforcement of a Commission order is sought, the court may make and enter, upon the pleadings, testimony and proceedings set forth in such transcript, an order or decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Commission, and the jurisdiction of the court shall not be limited by acts pertaining to equity jurisdiction of the courts. An appeal may be taken as in other civil actions.

In the instant case, plaintiffs have not averred that an order was issued from the Commission, and therefore the plaintiffs have failed to set forth a cause of action pursuant to the Harrisburg Human Relations ordinance.

Although plaintiffs have failed to state causes of action under any of their fifteen counts, we will give plaintiffs leave to amend their complaint with respect to those counts capable of being cured by amendment. In Framlau Corporation v. Delaware County, 223 Pa. Super. 272, 276, 299 A.2d 335, 337 (1972), the court noted

> "[i]n the event a demurrer is sustained because a complaint is defective in stating a cause of action, if it is evident that the pleading can be cured by amendment, a court may not enter final judgment, but must give the pleader an opportunity to file an amended complaint. (citation omitted) This is not a matter of discretion with the court but rather a positive duty."

Plaintiffs are given leave to amend all of the counts in their amended complaint except Count IV. Relying upon the reasoning in Patterson, supra, this court finds that there are no set of facts which plaintiffs could allege which would enable

them to state a cause of action as a matter of-law pursuant to Section 1981.

For the foregoing reasons we enter the following

ORDER

AND NOW, this day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. §1983, Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. §1981.

BY THE COURT:

/s/
Joseph H. Kleinfelter, Judge

IN THE COURT OF COMMON PLEAS
FOR DAUPHIN COUNTY PENNSYLVANIA

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DEBORAH ALGER, FRANCES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, AND RODGER L. BEATTY	: CIVIL ACTION - LAW : : : : : : : : 2271 - 8 - 1992
Plaintiffs	:
V.	:
STANLEY MROZOWSKI, RALPH MOYER, JEFFREY PICCOLA, GARY BEESE, JOHN THOMAS, DAHL KROW, MARK BARTON, LARRY DECKER, DEBORAH GANTT, PATRICIA BARD, WENDY MINNIX, LYNN LOOMIS, SANDY REISINGER, KELLY DUNLAP, IRENE URBAN, INDIVIDUALLY; BOSWELL, SNYDER, TITNER, & PICCOLA, A LAW FIRM, EDGEWATER PSYCHIATRIC CENTER, NORTHWESTERN CORPORATION, DAUPHIN COUNTY MENTAL HEALTH AND MENTAL RETARDATION	: : : : : : : : : : : : : : : : : : : :

CASE MANAGEMENT UNIT	:	
AND DAUPHIN COUNTY	:	JUDGE KLEINFELTER
MENTAL HEALTH AND	:	
MENTAL RETARDATION	:	
COUNSELLING, PRIVATE	:	
CORPORATIONS, AND	:	
DAUPHIN COUNTY A LOCAL	:	
GOVERNMENT ENTITY	:	JURY TRIAL DEMANDED
	:	
Defendants	:	

BEFORE: MORGAN, TURGEON and KLEINFELTER, JJ.

ORDER

AND NOW, this 20th, day of September, 1993, defendants' demurrers to Counts I-XV are granted. Plaintiffs are given leave to amend the following counts: Counts I and II, alleging violations of 42 U.S.C. §1983, Count III alleging a violation of 42 U.S.C. 1985, Counts V-XIII, alleging defamation, Count XIV, alleging wrongful discharge, and Count XV alleging a violation of Harrisburg Ordinance 6-1985. Plaintiffs are not given leave to amend Count IV, alleging a violation of 42 U.S.C. §1981.

BY THE COURT:

/s/
Joseph H. Kleinfelter, Judge

IN THE COURT OF COMMON PLEAS
FOR DAUPHIN COUNTY PENNSYLVANIA

DIANN HARRIS CARTER, JOANNA FOSTER, JOYCE WATERS, GWENDOLYN TOWLES MANNING, DEBORAH ALGER, FRANCES MANNING, DR. ROSEMARY MADL, MARILYN R. LOVELL, CATHY CONSLA, AND RODGER L. BEATTY	: CIVIL ACTION - LAW : : : : : : : : 2271 - 8 - 1992
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CASE MANAGEMENT UNIT	:	
AND DAUPHIN COUNTY	:	JUDGE KLEINFELTER
MENTAL HEALTH AND	:	
MENTAL RETARDATION	:	
COUNSELLING, PRIVATE	:	
CORPORATIONS, AND	:	
DAUPHIN COUNTY A LOCAL	:	
GOVERNMENT ENTITY	:	JURY TRIAL DEMANDED
	:	
Defendants	:	

AMENDED COMPLAINT

INTRODUCTORY STATEMENT

The plaintiffs seek redress for the deprivation of their Constitutionally protected rights under the 1st, 4th, 5th and 14th Amendments pursuant to 42 U.S.C. §1983. Plaintiffs also seek relief for the violation of plaintiffs' rights under the Constitution of Pennsylvania and also under Pennsylvania's Common Law and statutes. This is an Amended Complaint brought in response to an order of the Honorable Joseph H. Kleinfetter J., Court of Common Pleas of Dauphin County, Pennsylvania, issued on September 20, 1993 and received by plaintiffs' counsel on September 24, 1993. Under the order plaintiffs' were given leave to amend all Counts of their June 4, 1992 complaint except for those Counts alleging deprivations protected by 42 U.S.C. §1981.

JURISDICTION

1.) This action is brought for violations of plaintiffs' rights under the 1st, 4th, 5th and 14th Amendments to the U.S. Constitution pursuant to 42 U.S.C. 1983, and 42 U.S.C. 1985 and certain state constitutional, common law and statutory claims.

2.) Jurisdiction is vested in this court by virtue of 42 USC §1983; 42 U.S.C. §1985, 28 USC 1343 (a)(3) and (4); 42 USC 1931; and 42 USC 1367 all of which confer jurisdiction and authority to hear suits to redress the deprivation of rights, privileges, and immunities guaranteed under the Constitutional and Federal Statutory provisions enumerated above.

3.) Jurisdiction is vested in this court to hear claims arising under the aforementioned federal laws by virtue of the Supremacy clause to the U.S. Constitution and by virtue of this courts original jurisdiction to hear claims arising under the constitution and laws of the Commonwealth of Pennsylvania and its common law and statute.

PARTIES

4.) Plaintiff Diann Harris Carter (Carter) is an adult woman and is an African-American citizen of the United States of America who resides at 1621 N. 2nd. Street, Harrisburg, Dauphin County, Pennsylvania 17102.

5.) Plaintiff Joanna S. Foster (Foster) is an adult woman and is an African-American citizen of the United States of America who resides at 2647 Waldo Street, Harrisburg, Dauphin County Pennsylvania 17110.

6.) Plaintiff Joyce Waters (Waters) is an adult woman and is an African-American citizen of the United States of America who resides at 1516 Dogwood Drive, Harrisburg, Dauphin County Pennsylvania 17110.

7.) Plaintiff Gwendolyn Towles Manning (Gwen Manning) is an adult woman and is an African-American citizen of the United States of America who resides at 1548 Creek Bed Drive, Harrisburg, Dauphin County Pennsylvania 17110.

8.) All plaintiffs above are black, are female, and held management positions at the Rosalie G. Handler Center in Harrisburg, Dauphin County, Pennsylvania.

9.) Plaintiff Deborah Alger (Alger) is an adult woman, is a lesbian and is a citizen of the United States of America who resides at 41 Argyle Street, Harrisburg, Dauphin County Pennsylvania 17104.

10.) Plaintiff Frances Manning (Manning) is an adult woman, and is a citizen of the United States of America who resides at 416 Center Street, Millersburg, Dauphin County, Pennsylvania 17061.

11.) Plaintiff Dr. Rosemary Madl (Madl) is an adult woman, is a lesbian and is a citizen of the United States of America who resides at 1407 North Front Street, Harrisburg, Dauphin County, Pennsylvania 17102.

12.) Plaintiff Marilyn R. Lovell (Lovell) is an adult woman, and is a citizen of the United States of America who resides at 250 Timber Trail Lane, Harrisburg, Dauphin County, Pennsylvania 17112.

13.) Plaintiff Cathy Consla (Consla) is an adult woman, is a lesbian, and is a citizen of the United States of America who resides at 2045 Market Street, Extension, Middletown, Dauphin County, Pennsylvania 17057.

14.) Plaintiff Rodger L. Beatty (Beatty) is an adult man, is gay, and is a citizen of the United States of America who resides at 6103 Stanton Avenue, Pittsburgh, Allegheny County, Pennsylvania 15206.

15.) The defendant Stanley Mrozowski (Mrozowski) sued here in his individual capacity is an adult man, residence address unknown, who at all times relevant to this action was the Administrator of the Dauphin County Mental Health Mental Retardation Program.

16.) The defendant Ralph Moyer (Moyer) sued here in his individual capacity is an adult man, residence address unknown, who at all times relevant hereto was Director of Dauphin County Human Services.

17.) The defendant Jeffrey Piccola (Piccola) sued here in his individual capacity is an adult individual who at all times relevant hereto was a member of the Harrisburg law firm of Boswell, Synder, Titner & Picolla.

18.) The defendant John Thomas (Thomas) is an adult male, residence address unknown, who at all times herein complained of was employed by Edgewater Psychiatric Center as a social worker.

19.) The defendant Dahl Krow, sued here in his individual capacity, is an adult male, residence address unknown, who at all times herein complained of worked for the defendant Dauphin County as a contract monitor.

20.) The defendant Mark Barton, sued here in his individual capacity, is an adult male, residence address unknown, who at all times herein complained of worked for the defendant Dauphin County as a mental health specialist.

21.) The defendant Larry Decker (Decker), sued here in his individual capacity, is an adult male, residence address unknown, who at all times relevant hereto was employed by the Commonwealth of Pennsylvania as the DPW-OMH Licensure representative for the DPW Central Regional Office.

22.) The defendant Gary Beese (Beese) sued here in his individual capacity, residence address unknown, is an adult male who at all times relevant hereto was employed as Community program Manager by the Commonwealth of Pennsylvania (DPW) Community Mental Health Services.

23.) The defendant Deborah Gantt (Gantt), sued here in her individual capacity, is an adult woman, residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as a mental health case manager.

24.) The defendant Patricia Bard (Bard), sued here in her individual capacity, is an adult woman residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as a therapist.

25.) The defendant Wendy Minnix (Minnix), sued here in her individual capacity, is an adult woman, residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as a therapist.

26.) The defendant Lynn Loomis (Loomis), sued here in her individual capacity, is an adult woman, residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as a case management supervisor.

27.) The defendant Sandy Reisinger (Reisinger), sued here in her individual capacity, is an adult woman, residence address uncertain who at all times relevant hereto was employed at the Rosalie G. Handler Center as a case manager.

28.) The defendant Kelly Dunlap (Dunlap), sued here in her individual capacity, is an adult woman, residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as a case manager.

29.) The defendant Irene Urban (Urban), sued here in her individual capacity, is an adult woman, residence address uncertain, who at all times relevant hereto was employed at the Rosalie G. Handler Center as the fiscal coordinator.

30.) The defendant Boswell, Synder, Titner, & Piccola (law firm) is a law firm located at 315 N. Front Street, Harrisburg, Dauphin County, Pennsylvania, 17108, who at the times herein complained of was employed as the solicitor for Dauphin County.

31.) The defendant Edgewater Psychiatric Center (Edgewater) is a Pennsylvania Corporation headquartered at 1829 N. Front Street, Harrisburg, Dauphin County, Pennsylvania, 17102, and is involved in the treatment of acute psychiatric disorders.

32.) The defendant Northwestern Corporation (Northwestern) is a Pennsylvania Corporation headquartered at 906 Bethlehem Pike, Erdenheim, Pennsylvania, 19118, and is engaged in various for profit and not for profit activities.

33.) The defendants Dauphin County Mental Health Mental Retardation Case Management Unit and Dauphin County Mental Health and Mental Retardation Counselling (DCMHC), are private entities run and controlled by the defendant Mrozowski and Moyer having their headquarters at 1919 N. Front Street, (Handlers old address, whose business they were assigned) in Harrisburg, Pennsylvania, engaged in the business of providing mental health care to local area persons. These entities are collectively referred to hereinafter as DCMHC's.

34.) The defendant County of Dauphin, sued here as a local government agency, is a municipal corporate entity under Pennsylvania law, having its seat of operations in Harrisburg, Pennsylvania, at Front and Market Streets.

OPERATIVE FACTS

35.) All plaintiffs at all times relevant hereto were employed at the Rosalie G. Handler Center and had demonstrated a high degree of professional skill. Handler provided counseling and other services for persons with mental difficulties.

36.) All plaintiffs were fully qualified to perform and did perform their assigned tasks promptly, properly, competently, and consistently on a regular basis.

37.) All plaintiffs at all times complied with, met, or exceeded the high standards and expected behavior of trained and experienced professionals dealing with emotionally disturbed persons.

38.) The plaintiffs Carter, Foster, Waters, and Gwen Manning are all African American females who held high management and or Board positions at the Rosalie G. Handler Center (Handler) prior to June 15, 1990.

39.) The plaintiffs Lovell and Frances Manning are females who held high management positions at Handler prior to June 15, 1990.

40.) The plaintiffs Madl, Consla, and Alger are females, are lesbian, and held high management and or staff positions at Handler prior to June 15, 1990; the plaintiff Madl (Ph.D) was CEO at Handler.

41.) The plaintiff Beatty is a male, is gay, and held a high management position at Handler prior to June 15, 1990.

42.) All plaintiffs were replaced after June 15, 1990 by white, male persons, all of whom were non gay or non lesbian.

43.) All plaintiffs were replaced by persons less qualified and/or less capable than plaintiffs.

44.) All plaintiffs were systematically harassed, intimidated, and injured by falsehoods as to their character, job performance, and/or professional qualifications by the defendants in various combinations prior to June 15, 1990.

45.) On June 15, 1990 all plaintiffs were summarily dismissed from their positions at Handler without just cause, wrongfully, on account of their race, sex, and/or sexual orientation in certain cases in violation of their civil rights and in violation of state law and/or ordinances of the City of Harrisburg by defendants acting jointly and severally under color of state law through state action.

46.) All plaintiffs believe and therefore aver that their rights to substantive and procedural due process and their rights to enjoy the equal protection of the laws were violated by the defendants jointly and severally acting through the power and influence of the defendants here who were government employees, illegally under color of state law, wherein defendants illegally agreed among themselves to disrupt, destroy, harass, intimidate and defame plaintiffs variously on account of plaintiff's respective race, sex, and/or sexual orientations in order to harm the plaintiffs and also to destroy Handler Center to effectuate the movement of Handler clientele and business to the defendants Edgewater, Northwestern, Dauphin County and DCMHC's.

47.) Plaintiffs do not know every the precise date or the time of every meeting among the defendants at which the deliberate and intentional plans to harm and injure plaintiffs, destroy Handler and thus refer Handler business to defendants Edgewater, DCMHC's, and Northwestern occurred, but plaintiffs allege and aver that unlawful combinations for unlawful purposes were participated in

by all defendants named here throughout at least from 1989 and 1990 up until and after June 15, 1990 at which time Handler was illegally seized and destroyed by defendants all by virtue of defendant's unlawful actions.

48.) The defendant Mrozowski; participated in, helped direct, facilitate, and then manipulated the systematic misinformation as to the qualifications and alleged misbehavior of plaintiffs that led to their injuries by, among other things, soliciting and directing the writing of defamatory statements used to discredit plaintiffs.

49.) The defendant Mrozowski knowingly verified as true and correct what he knew to be patently misleading, inaccurate, and dishonest, i.e. false statements about the plaintiffs, made by other defendants herein, endorsing the defamatory statements as accurate without any investigation and without any hearing,
intentionally seeking and wanting reasons to discredit plaintiffs, thus providing all defendants access to Handler business and resources which was an ulterior motive of Mrozowski's.

50.) The defendant Moyer also participated in and helped direct and facilitate (in the same manner as Mrozowski) the dissemination of false and defamatory misinformation as to the qualifications and conduct of plaintiffs that led to their injuries and the dissolution of Handler thus providing all defendants access to Handler business and resources which was an ulterior motive of Moyer's.

51.) The defendant Moyer, while verifying misleading, inaccurate, dishonest, and false statements made by other defendants here about plaintiffs, endorsing them as accurate while knowing they were untrue, and that plaintiffs had no hearing in any forum on these matters, also told Dauphin County Commissioner Peters on or about the middle of March 1990 that "we're going to get rid of them" meaning the plaintiffs, and in particular referred to

the gay - lesbian plaintiffs meaning they were undesirables targeted for removal from Handler for no just cause.

52.) The defendant Piccola took the defamatory, inaccurate, and dishonest affidavits of other defendants herein knowing them to be unverified and knowing plaintiffs had never been confronted with them, to the floor of the Pennsylvania House of Representatives where he improperly made reference to and discussed the defamatory statements as he later did with reporters and others in unprivileged circumstances, to wit with reporters for the Harrisburg Patriot News.

53.) The plaintiffs believe and therefore aver that defendant Piccola improperly took these statements from his law firm, which serves as solicitor for Dauphin County, and publicized them in support of all the defendants' joint efforts to injure and harm plaintiffs.

54.) The defendant Gary Beese supported the unlawful actions of the defendants, knowingly, through the exaggerated use of his authority over licensing procedures in Pennsylvania to infer, imply, and otherwise create grounds for the other defendants, particularly the defendants Mrozowski, Moyer, DCMHC's, and Dauphin County to charge mismanagement at Handler.

55.) The defendant Larry Decker supported the unlawful actions of the defendants, knowingly, through the exaggerated use of his authority over licensing procedures in Pennsylvania to infer, imply, and otherwise create grounds for the other defendants, particularly the defendants Mrozowski, Moyer, DCMHC, and Dauphin County to charge mismanagement at Handler.

56.) The defendant Thomas, an employee of defendant Edgewater generated false reports of mismanagement at Handler wherein he claimed that the plaintiff Foster, an African American

woman, was not attending after - care follow-up meetings when in fact it was he, Thomas, who would not attend these meetings though he knew or should have known she was properly attending.

57.) Plaintiffs believe and therefore aver that the defendant Thomas created false reports about Foster and did not attend after - care meetings on account of Foster's race then later joined in an inaccurate reporting of these facts to create false grounds to discredit Foster and assist in her removal from Handler.

58.) The defendant Gantt, unlawfully, with malice aforethought, intentionally knowing her accusations to be false, inter alia made verbal and written statements on or about June, 1990 accusing the plaintiffs Lovell, Beatty, Foster, and Waters, her supervisors, of gross neligience [sic] and criminal misconduct all of which were incorrect, false, and defamatory, were unprivileged, and were communicated to third persons.

59.) The defendant Bard unlawfully, with malice aforethought, intentionally knowing her accusations to be false, inter alia made written and verbal statements on or about June, 1990 which were incorrect, false, and defamatory, that the plaintiffs Carter, Madl, Lovell, and Richard Laban who is not a plaintiff here were guilty of criminal acts and gross mismanagement.

60.) The defendant Minnix unlawfully, with malice aforethought, intentionally knowing her accusations to be false on or about May and June of 1990 made false statements accusing plaintiffs Gwen Manning and Madl of criminal acts and indifference to the well being and safety of Handler clients.

61.) The defendant Loomis unlawfully, with malice aforethought, intentionally knowing her accusations to be false, on or about June 1990 made false statements that the plaintiffs Lovell,

Gwen Manning, Madl, Beatty, Waters, and Carter had committed criminal acts at Handler and that they were incompetent.

62.) The defendant Reisinger unlawfully, with malice aforethought, intentionally knowing her accusations to be false, made false statements that were incorrect, false, and defamatory, particularly as to plaintiffs Gwen Manning, Madl, Beatty, and Frances Manning accusing them of criminal and reckless acts at Handler on or about June 1990.

63.) The defendant Dunlap unlawfully, with malice aforethought, intentionally knowing her accusations to be false, made false statements which were incorrect, false, and defamatory, particularly as to plaintiffs Foster and Alger accusing them of criminal misconduct and reckless treatment of Handler clients on or about June 1990.

64.) The defendant Urban unlawfully, with malice aforethought, intentionally knowing her accusations to be false, on or about June 1990 made false statements about the plaintiffs Beatty Madl, Frances Manning, and Consla accusing them of criminal misconduct at Handler.

65.) Plaintiffs believe and therefore aver that all defendants referred to in paragraphs 56 through 64 above knowingly gave false and misleading statements to purported authorities who publically referred to their aforementioned statements as proof of criminal misconduct at Handler to newspapers, radio, and television in the Harrisburg area seeking to harm plaintiffs while seeking favors in the form of promotions, jobs, or for personal reasons, all of which was known to defendants Mrozowski, Moyer, and defendant Dauphin County by and through the Commissioners thereof.

66.) The defendant law firm knowingly abused and used client information, without investigation or notice to plaintiffs,

which they had taken from the defendants Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Urban, on behalf of defendant Dauphin County and provided this information to defendant Piccola who released this information to the public and press knowing the plaintiffs had never had an opportunity to confront the statements against them and did all of this as part of a broader plan to discredit plaintiffs individually and as a group thus causing injury to plaintiffs professional and personal reputations, their loss of employment, and loss of personal freedom.

67.) At the time the defamatory information referred to above was disseminated by the defendant law firm and the defendant Piccola, a legislative investigation was pending before the Pennsylvania House of Representatives.

68.) Plaintiffs believe and therefore aver that the injurious, wrongful, and inaccurate publicity orchestrated by all defendants by and through defendant Piccola and the defendant law firm and through the defendant Mrozowski who appeared on television on June 16, 1990 and stated that the plaintiffs had committed criminal acts and that criminal charges would be brought against plaintiffs and that he (Mrozowski) had fired them (plaintiffs') was designed to deter, discourage, or otherwise influence an open, objective, and complete airing of the accusations against plaintiffs and others in the press and in the legislature, by Handler and plaintiffs.

69.) Plaintiffs believe and therefore aver that they were victimized by defendants to avoid the exposure of the improper relationship among defendants and their unlawful plans to dissolve Handler and direct its resources for their own benefit.

70.) The defendant Edgewater was in serious financial difficulty on or about 1988 through June 15, 1990 all of which was known to all the defendants here.

71.) The defendant Edgewater needed, inter alia, the partial program at Handler to survive financially, and this was well known to the defendants herein and was consistently pursued by them for Edgewater at the behest of Northwestern.

72.) The defendant Edgewater by and through the other defendants here participated in and encouraged the destruction of Handler thus injuring plaintiffs in order to gain access and control of Handler's partial program and case management resources.

73.) The plaintiffs believe and therefore aver that defendant Edgewater was over $500,000.00 in debt to defendant Dauphin County when acquired by the defendant Northwestern Corporation.

74.) Plaintiffs believe and therefore aver that the defendant Northwestern acquired Edgewater and agreed to assume the $500,000.00 debt Edgewater owed the defendant Dauphin County.

75.) The defendant Northwestern has never to the best of plaintiffs belief ever paid the Edgewater debt and has avoided its commitment to satisfy the said debt as a condition to taking Edgewater.

76.) Plaintiffs also believe and therefore aver that the defendant Northwestern sought and took control of Handler's C.O.N. (Certificate Of Need) in violation of Commonwealth regulations as to transfer and control of this valuable resource all of which was done by and through the concerted efforts of certain defendants.

77.) All the above was accomplished by and through the above defendants acting under color of state law through state action, victimizing the plaintiffs, along with Handler, to accomplish their illegal ends which were to discriminate against plaintiffs and effect the acquisition and control of Handlers' services.

78.) The defendants accomplished this goal partly by collecting defamatory statements about plaintiffs from certain defendants - namely Gantt, Bard, Minnix, Loomis, Reisinger, Dunlap, and Thomas, on or about May and June of 1990, and publishing them in the media in order to defame plaintiffs and destroy plaintiffs individual and collective reputations and credibility.

79.) Defendants painted Handler as mismanaged by the plaintiffs, who the defendants falsely accused for ulterior purposes in various combinations, at different times, of criminal misconduct, incompetence, and various unethical practices.

80.) Plaintiffs also believe and therefore allege that these false accusations were planned and effectuated because plaintiffs were black, female, and in certain cases gay and or lesbian, because defendants wished to harm them for these reasons alone.

81.) After planning trumped up, false, and defamatory statements about plaintiffs individually, about plaintiffs' as a group, and about Handler as an institution, the defendants orchestrated an abusive, dishonest, politicized, legal legislative, and media strategy to mask their prejudices and accomplish their illegal ends.

82.) The aforementioned strategies included a hearing devoid of due process where no testimony was taken, where plaintiffs were never given an opportunity to confront charges against them, or to participate in any way and which resulted inter alia the same day in an illegal search and seizure of Handler by defendants who forcibly removed plaintiffs from their jobs and in press conferences where Mrozowski among others referred to plaintiffs as criminals.

83.) In excess of the authority granted in a questionable court order on June 15, 1990, the plaintiffs were, without warning, physically forced out of their offices, their rights to be secure in

their persons and property violated by virtue of an improperly conceived and improperly executed court order achieved through fraudulently procured statements by the defendant Mrozowski on account of their race, sex, and/or sexual orientation all in violation of their procedural and substantive due process rights to be free of abusive governmental power unrelated to any reasonable government objectives.

84.) All the above occurred in violation of a contract between Dauphin County and Handler which was due to expire within two weeks of the seizure, i.e. on June 30, 1990, except that defendant Dauphin County had never executed the 30 day notice of termination provisions required by the contract having only expressed their plan to take the partial hospitalization program.

85.) When Handler noticed the defendant Dauphin County that it wished to appeal the action, the Handler Board was told that criminal charges would be brought against the CEO Dr. Rosemary Madl, a plaintiff here, and that there would be "other actions taken" unless Handler signed over all its assets immediately to the defendant Dauphin County lock, stock, and barrel.

86.) As a result of the abuse in the media on or about early June 1990, where the defendant Picolla and others had publically proclaimed that the "Handler Board is rotten to the core" and the constant threats emanating from defendants, some of whom had told plaintiffs they were going to be replaced, the Handler Board, under duress, dissolved the Rosalie G. Handler Center on or about July, 1992.

87.) The actions of the defendants injured plaintiffs in their reputations personally and professionally, and caused them to be unemployed, subjected them to threats of arrest and public charges of criminal misconduct and forcibly excluded them from their place of work, and destroyed their jobs, replacing them with other

persons, subjecting them to threats of retaliation should they resist and to ridicule, depriving plaintiffs of their rights to be secure in their persons and properties, and depriving them of their right to substantive due process of law i.e. to be free of the abusive application of government power without any reasonable government objective, and their rights to enjoy the privileges and immunities guaranteed them under the Constitution and laws of the United States of America as further defined by 42 USC 1983 42 USC 1985, and the Constitution and laws of Pennsylvania including Pennsylvania's Constitution Article I Sections 1, 26, and 28 which prohibits injury to reputation sexual discrimination, and abuse by government at the hands of abusive state government entities and officials as here.

88.) The defendants intentionally violated plaintiffs rights to enjoy rights, privileges and immunities quaranteed [sic] by the Constitution and laws of the United Sates of America and of Pennsylvania, all on account of their race, sex, age, and/or sexual orientation.

89.) Plaintiffs allege that defendants acts were knowing acts of invidious discrimination, prohibited by the Constitution and Laws of the United Sates of America, and of Pennsylvania, including the ordinances of the City of Harrisburg prohibiting discrimination in employment on account of sexual choices or orientations.

90.) The defendants agreed together unlawfully for unlawful purposes to knowingly remove plaintiffs from their positions.

91.) The defendants Dahl Krow and Mark Barton in knowing unlawful violation of the June 15, 1990 court order misrepresented and effectuated same by causing all plaintiffs to be removed forcibly from their positions under armed threat pursuant to their purported authority as Dauphin County officials.

92.) Defendants' claims of authority under the Court order of June 15, 1990 were in excess of the order, and the forcible removal of plaintiffs from their employment and their termination of employment by the defendants by and through the sheriff of Dauphin County constituted a wrongful discharge of plaintiffs by the defendants by virtue of the defendants' take over of Handler.

93.) The defendants, in addition to manifesting their injuries to plaintiffs for reasons of race, sex, and sexual orientations, conspired unlawfully to injure plaintiffs as a means to acquire control of Handler for financial purposes through state action under color of state law.

94.) Contrary to the publically stated falsehoods and claims of mismanagement made by the defendants regarding Handler the plaintiffs were doing their jobs in an exemplary fashion but, nonetheless in some cases were replaced on or about June 15, 1990 by those who had earlier been discharged or disciplined for incompetence, such as the defendant Urban.

95.) All parties named as defendants herein, excepting individual persons, are recipients of County, State, and Federal funds.

96.) Plaintiffs believe and therefore aver that in addition to the invidious violations of their civil rights, and the wrongful discharges and defamations they suffered through defendants' actions, that plaintiffs were victims of an unlawful conspiracy to 21 destroy Handler by the defendants in order that defendants might unlawfully enjoy the financial fruits gained thereby.

97.) The actions of all defendants were unlawful, were known by them to be unlawful, and were in violation of plaintiff's rights under various federal, state, and local laws.

98.) No plaintiff in this action is a public figure.

COUNT I

ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR THE DEPRIVATIONS OF THEIR 1ST, 4TH, 5TH AND 14TH AMENDMENT RIGHTS AND FOR CONSPIRACY TO DEPRIVE PLAINTIFFS OF THEIR AFOREMENTIONED RIGHTS IN VIOLATION OF THEIR CIVIL RIGHTS PURSUANT TO 42 U.S.C. §1983

99.) Paragraphs 1 through 98 above are incorporated by reference herein and made a part hereof.

100.) The defendants, by and through the use of state power, under color of state law, destroyed Handler unlawfully and unlawfully deprived plaintiffs of their property interest in employment and injured them in their professional credentials, and subjected them to an unlawful exclusion from their proper place of work in violation of their rights to be secure in their persons and property and deprived them of their protected interest in substantive due process whereby they have a right to be free of the abuse of government power and authority where government power is invoked in the pursuit of non government goals without any reasonable government objectives.

101.) The defendants unlawfully, under color of state law, through state action, removed plaintiffs from their justifiably earned positions because of their race in the cases of the plaintiffs Carter, Foster, Waters, Gwen Towles Manning, also intentionally removing plaintiffs on account of their sex in the case of all plaintiffs except the plaintiff Beatty and additionally on account of sexual preference in the cases of the plaintiffs Madl, Consla, Alger, and Beatty.

102.) The defendants, sometimes individually and sometimes in concert, but at all times by and through their positions as state employees and/or officials acted under color of state law and their unlawful conduct manifested itself as state action in that defendants:

a.) Intentionally defamed plaintiffs, and injured them professionally.

b.) Caused plaintiffs to be unemployed and adversely affected their ability to form associations, to speak or to earn a living.

c.) Caused plaintiffs to be forcibly ejected from their place of employment under threat of armed force based upon a Court order which was fraudulently procured.

d.) Caused plaintiffs to be injured in their professional credentials, and falsely denigrated their credentials and qualifications to perform on account of their race, sex, and/or sexual orientation.

e.) The conduct of the defendants deprived plaintiffs of their right to substantive due process of law being in violation of plaintiffs' 1st, 4th, 5th, and 14th Amendment rights to be free of the abusive use and application of government power devoid of any reasonable government objective whereby plaintiffs were injured in their loss of free speech and associations, under the 1st Amendment, and of the freedom of movement and to travel freely, under the 1st and 4th Amendments, to be free from arbitrary seizures and to be free from the forcible removal from their employment under the 1st and 4th Amendment and to be free from the loss of their jobs and to suffer diminished earning capacity under the 1st and 5th Amendments, and to be free of all of the above which resulted from the arbitrary, cruel, unwarranted, ulterior, abusive, and unreasonable application of government power

without any reasonable government objective all of which is prohibited by the 14th Amendment.

103.) The defendants in various combinations throughout 1989 and 1990, up to and including the months after the June 15, 1990 seizure of Handler, met and decided to destroy Handler by and through attacks on plaintiffs as is evidenced by the following:

a.) The defendants Mrozowski and Moyer on or about Oct 19, 1989 met with Dauphin County Commissions in Harrisburg, Pennsylvania and discussed inter alia Northwestern's need for Handler's partial hospitalization program without which Edgewater would go out of business. Also discussed was Northwestern's request for a 20 million dollar bond issue. Handler's Board and management were kept in the dark.

b.) On or about January 11, 1990 the defendants Mrozowski, Moyer, Edgewater, Krow, and others participated in a meeting in Harrisburg, Pennsylvania in which a plan to remove minority managers at Handler was discussed. At this meeting Mrozowski said that by July 1, 1990 furloughed White men would be back replacing the Black and Gay managers at Handler.

c.) At the January 18, 1990 Dauphin County MH/MR Executive Committee meeting the defendants Mrozowski and Moyer, with the defendants Barton and Krow present, indicated that the new hires and promotions at Handler were not "quality" nor acceptable to County officials as replacement managers. New hires were plaintiffs Gwen Manning (Black woman), and plaintiff Rodger Beatty (Gay). Promotions were plaintiff Diann Carter (Black woman) and plaintiff Marilyn Lovell (White woman). At this meeting the defendant Barton presented a paper entitled "Troubled times" having to do with a case management RFP.

d.) On or about the morning of February 16, 1990 in Harrisburg, Pennsylvania the defendants Mrozowski and Moyer, along with members of the Dauphin County MH/MR Advisory Board, met to plan a phoney RFP (Request For Proposal whereby Handler would not receive funds specifically because the "qualifications" of Dr. Madl and other Handler management was not satisfactory to Dauphin County officials. At an afternoon meeting the same day Mrozowski and others stated that the RFP was only pro-forma and that Handler would undoubtedly be refunded. Mrozowski and others also openly stated that there were no problems with Handler.

e.) On or about mid-March 1990 in Harrisburg, Pennsylvania the defendant Moyer, following an earlier meeting with Commissioner Sally Klein related to Commissioner Carol Peters that he had a plan to reorganize Handler because "Dr. Madl is a lesbian" indicating the plan was a faite accompli.

f.) On or about April 10, 1990, in Harrisburg, Pennsylvania the defendant Mrozowski along with state officials met with the Dauphin County Commissioners to discuss a plan to de-head Handler's case management supervisors who were Rodger Beatty (gay), Joanna Foster (Black woman) and Joyce Waters (Black woman). When pressed by Commissioner Carol Peters for specifics as to Mrozowski's claims that there were complaints and problems at Handler, Mrozowski could cite none and merely said he couldn't get along with current mangers at Handler.

g.) On or about June 10-13 1990 in Harrisburg, Pennsylvania, the defendant Jeffrey Picolla told newspaper reporters and television crews that "gross negligence" and "criminal misconduct" had been committed by Handler's management i.e. the plaintiffs. Piccola later told plaintiff Joyce Waters in a letter (August 1990) that he had met with current and former staff

members (some listed as defendants herein) prior to his publically disseminated June 13, 1990 defamatory outburst.

h.) On or about June 15, 16, and 17th 1990, their claims to the contrary notwithstanding, the defendants Mrozowski and Moyer, by with and through the authority of the Commissioners of Dauphin County, having conspired with, on or before June 15, 1990, the defendant Dahl Krow, did summarily dismiss the plaintiffs having forcibly taken control of all of Handler's property, assets, and operations on June 15, 1990.

i.) On or about December 15, 1990 in Harrisburg, Pennsylvania Yolanda Swan, Pennsylvania Human Relations Commission investigator (after 36 hours of fact finding) wrote in a report that beginning with January 11, 1990 Dauphin County deliberately set up the conditions at Handler to dismantle the organization because a woman was in charge. Swan also observed that Dauphin County also did not like the visibility of the Black female managers at Handler.

j.) On or about the Spring of 1991, the incumbent County Commissioner Sally Klein caused to be published a brochure, by, through, and with the defendant Piccola, which was disseminated throughout Dauphin County, wherein she said she was forced to close Handler center because of "irregularities in medication record keeping" and because of a "backlog" of treatment." Klein had also mentioned this in her February 1991 state of the County address delivered in Dauphin County. These allegations were false.

k.) On or about March of 1991 the defendant Moyer met with then County Commissioner candidate Marilyn Levin in Harrisburg, Pennsylvania, and told her that the Handler center had to be closed because it was overrun with lesbians who were attacking clients and other staff. These misrepresentations were totally false and were known by Moyer to be false.

l.) Meanwhile, almost a year earlier, in May of 1990 in Harrisburg, the defendant Gantt told MR case manager Sharon Grady that once Dauphin County took over at Handler that MR case managers at Handler would know what it feels like to lose their supervisors, in direct reference to the Black women plaintiffs, Joyce Waters and Joanna Foster.

WHEREFORE the plaintiffs demand judgement of the defendants jointly and severally for the deprivations of their federally protected rights, and for conspiracy to deprive them of their federally protected rights pursuant to 42 U.S.C. §1983 in an amount greater than $50,000.00 together with costs of suit, interest, fees, and such other relief as the Court may deem appropriate.

COUNT II

ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR CONSPIRACY TO DEPRIVE PLAINTIFFS OF THEIR CIVIL RIGHTS PURSUANT TO 42 USC 1985

104.) Paragraphs 1 through 103 above are incorporated by reference herein and made a part hereof including the highly specific averments of fact made therein.

105.) The actions of all the defendants were unlawful in that the defendants agreed in various combinations as aforementioned to cooperate together for the unlawful purpose of depriving plaintiffs of their rights to enjoy the equal protections of the laws, rights, privileges, and immunities of the Constitution and laws of the United States of America pursuant to 42 USC 1985 as aforementioned.

106.) Defendants actions were exhibitions of a class based animus directed at plaintiffs on account of plaintiffs' race, sex

and in some cases also sexual orientation all of which did cause plaintiffs great harm by creating a false set of facts for a court hearing, caused injury to plaintiffs' careers, and replaced them at their jobs.

WHEREFORE the plaintiffs demand of the defendants jointly and severally damages in an amount in excess of $50,000.00 for the deprivation of their rights to be free of conspiracies to deprive them of the equal protections of the laws and the aforementioned Constitutional rights pursuant to 42 U.S.C. §1983 together with costs, fees, and such other relief as the Court may deem appropriate.

COUNT III

ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR CIVIL CONSPIRACY TO DEFAME PLAINTIFFS, DEPRIVE PLAINTIFFS OF THEIR CIVIL RIGHTS, CAUSE THE WRONGFUL DISCHARGE OF PLAINTIFFS, AND TO DISCRIMINATE AGAINST PLANTIFFS ON ACCOUNT OF THEIR RACE, SEX, AND SEXUAL PREFERENCE.

107.) Paragraphs 1 through 106 above are incorporated by reference herein and made a part hereof including the specific factual averments made therein.

108.) The actions of defendants were unlawful in that they unlawfully agreed to defame plaintiffs and planned to deprive plaintiffs of their positions knowingly, with malice aforethought for the unlawful purpose of causing plaintiffs' wrongful discharge and of replacing plaintiffs in their employment, and to discriminate against and harm plaintiffs on account of their race,

sex, and/or sexual preference thus depriving plaintiffs of their constitutionally and statutorily protected civil rights both federally and under Pennsylvania law.

WHEREFORE the plaintiffs demand of the defendants jointly and severally an amount in excess of $50,000.00 together with costs of suit and such other relief as may be deemed appropriate.

COUNT IV

ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR GROUP DEFAMATION

109.) Paragraphs 1 through 108 above are incorporated by reference herein and made a part hereof including the specific factual averments made therein.

110.) The plaintiffs were identified by defendants as members of a definitive, recognizably small group, known generally as Handler management.

111.) A recipient of communications about Handler management could and would identify the individual plaintiffs as members of that group. These recipients included the general public, Dauphin Counties' attorney Joshua Lock, and Judge Buckingham.

112.) Defendants regularly defamed the management of Handler and as a group (i.e. the plaintiffs) the Handler Board, thus injuring plaintiffs, variously referring to them as criminals, as carrying on criminal misconduct, as being incompetent, and as being professionally unqualified, all of which was totally false.

113.) Defendants by defaming plaintiffs (each identifiable as a member of a small discernable group) injured plaintiffs in their reputations and injured them in their professional credentials and reputations, holding plaintiffs up to scorn and ridicule and lowering them in the eyes of the community.

114.) Plaintiffs are not, and were not, public figures.

115.) The actions of the defendants were in no way privileged.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT V

THE PLAINTIFFS LOVELL, BEATTY, FOSTER, AND WATERS AGAINST THE DEFENDANT GANTT FOR DEFAMATION

116.) Paragraphs 1 through 115 are incorporated by reference herein and made a part hereof including.

117.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT VI

THE PLAINTIFFS CARTER, MADL, AND LOVELL AGAINST THE DEFENDANT BARD FOR DEFAMATION

118.) Paragraphs 1 through 117 are incorporated by reference herein and made a part hereof.

119.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT VII

THE PLAINTIFFS GWEN TOWLES MANNING AND MADL AGAINST THE DEFENDANT MINNIX FOR DEFAMATION

120.) Paragraphs 1 through 119 are incorporated by reference herein and made a part hereof.

121.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT VIII

THE PLAINTIFFS LOVELL, GWEN TOWLES MANNING, MADL, BEATTY, WATERS AND CARTER AGAINST THE DEFENDANT LOOMIS FOR DEFAMATION

122.) Paragraphs 1 through 121 are incorporated by reference herein and made a part hereof.

123.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed

plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT IX

THE PLAINTIFFS GWEN TOWLES MANNING, MADL, BEATTY, AND FRANCIS MANNING AGAINST THE DEFENDANT REISINGER FOR DEFAMATION

124.) Paragraphs 1 through 123 are incorporated by reference herein and made a part hereof.

125.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT X

THE PLAINTIFFS FOSTER AND ALGER AGAINST THE DEFENDANT DUNLAP FOR DEFAMATION

126.) Paragraphs 1 through 125 are incorporated by reference herein and made a part hereof.

127.) On or about June 6, 1990 the defendant Gantt made certain written and verbal statements containing false averments as aforementioned, which by reference and definition identified the plaintiffs above and charged them with actions and behavior as aforementioned that were disseminated publically on radio and television and in newspapers, that if true would constitute negligent, and criminal behavior all of which was false but which harmed plaintiffs jointly and severally along with all other plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT XI

THE PLAINTIFFS BEATTY, MADL, FRANCES, MANNING AND CONSLA AGAINST THE DEFENDANT URBAN FOR DEFAMATION

128.) Paragraphs 1 through 127 are incorporated by reference herein and made a part hereof.

129.) On or about June 11, 1990 the defendant Urban published a statement containing false averments, which by reference and definition identified the plaintiffs above and charged

them with actions and behavior that if true would constitute negligent, and in some matters legally actionable behavior all of which was false but which harmed plaintiffs jointly and severally along with all plaintiffs to this action.

WHEREFORE plaintiffs demand judgement of defendants jointly and severally in an amount in excess of the jurisdictional amount for compensatory and punitive damages, together with costs of suit, and such other relief as may be deemed appropriate.

COUNT XII

ALL PLAINTIFFS AGAINST THE DEFENDANTS MROZOWSKI, MOYER, KROW AND DAUPHIN COUNTY FOR WRONGFUL DISCHARGE

130.) Paragraphs 1 through 129 above are incorporated by reference herein and made a part hereof.

131.) The defendants named in this Count above all claimed in their legal actions against Handler that they were the de jure and the de facto controller of Handler functions and business, the contract with Handler not withstanding.

132.) On or about the weekend of June 15-17 and the following work week the defendants named in this Count conducted a complete take over of all functions at Handler to include the seizure of all Handler's private property, making decisions which were issued on the spot as to who would be retained and who would be terminated.

133.) By sheer brute force, in violation of any contract and/or law and in excess of the authority granted by Judge Buckwalter's order the defendants became Handler and ascended to the position of management for and at Handler.

134.) The plaintiffs were unlawfully excluded by force from their lawfully held positions by the defendants on June 15, 1990.

135.) The plaintiffs were removed from their rightful employment without notice or hearing, illegally and without just cause as was in fact admitted at the time by Dauphin Counties counsel.

136.) The defendants wrongfully discharged and/or caused the wrongful discharge of plaintiffs in order to harm plaintiffs, intending to harm plaintiffs all on account of plaintiffs race, sex, and/or sexual orientation.

137.) The plaintiff Madl was removed upon being accused of criminal misconduct which was completely false and unjustified and which was known by defendants to be false at the time.

138.) The plaintiffs rights to their employment was clear and manifest, apparent and known to the defendants named in this count who maliciously and without notice terminated plaintiffs in a show of force on June 15, 1990 which wrongful termination was ratified by defendants upon effectuating the Handler take over.

139.) The discharge of plaintiffs was in all ways wrongful, illegal, and devoid of just cause, being based upon illegal and defamatory accusations to which plaintiffs were never given an opportunity to respond.

140.) The wrongful discharge of defendants was in violation of conscience and against public policy and was known by defendants who are experienced in such matters to be wrongful and was an exception to Pennsylvania "at will" employment doctrine as specifically referenced in Judge Kleinfelter's September 20, 1993 order at page 15.

WHEREFORE the plaintiffs demand judgement of the defendants Mrozowski, Moyer, Krow, and Dauphin County in an amount in excess of $50,000.00 together with costs of suit, fees, and such other relief as may be deemed appropriate.

COUNT XIII

ALL PLAINTIFFS AGAINST ALL DEFENDANTS FOR THE VIOLATION OF THEIR CONSTITUTIONALLY PROTECTED RIGHTS PURSUANT TO PENNSYLVANIA CONSTITUTIONAL PROVISION ARTICLE I SECTIONS 1, 26, AND 28

141.) Paragraphs 1 through 140 are incorporated by reference herein.

142.) All defendants at the time herein complained of were government actors or were acting in agreement with government actors.

143.) As aforementioned plaintiffs were discriminated against variously because of their sex and race except in the case of the plaintiff Beatty who is a White gay male.

144.) As aforementioned all plaintiffs were injured in their reputations, professions, and right to earn a livelihood as protected by the Constitutional provisions enumerated above.

145.) The defendants both in their official and individual capacities violated, as evidenced above, the plaintiffs' rights to be secure in their persons and property, their rights to be secure in their reputations, their rights to the equal protections of the laws, their rights to be free of discrimination by the Commonwealth and its subdivisions, and their rights to be free of unlawful interference with their employment on account of their sex or race.

WHEREFORE plaintiffs demand judgement jointly and severally of the defendants in an amount greater than $50,000.00 for the violation of their rights pursuant to Pennsylvania Constitution Article I Sections 1, 26, and 28 together with costs, fees, and such other relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED

/s/

Don Bailey, PA ID#473687
845 Sir Thomas Court, #9
Harrisburg, PA 17109
(717) 541-4400

DATED: October 12, 1993

VERIFICATION

I, Don Bailey, attorney for the within named plaintiffs, hereby certify that the aforegoing averments in this amended complaint have been reviewed by and with the plaintiffs and are true and correct to the best of their knowledge, information, and belief. Plaintiffs personal verifications have been impossible to procure with the deadline for filing but will be filed as soon as possible.

Date: October 12, 1993

/s/
Don Bailey

CERTIFICATE OF SERVICE

I, Don Bailey, hereby certify that I am on this day serving a copy of the foregoing **Amended Complaint** upon the person (s) and in the manner indicated below, this 12th day of October 1993, service by First-Class Mail, Postage Prepaid, and Addressed as Follows:

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Harrisburg, PA 17101

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/s/
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717-541-4400

DATED: October 12, 1993

Supreme Court, U.S.
F I L E D
MAR 15 1996
CLERK

No. 95-1291

In The

Supreme Court of the United States

October Term, 1995

DIANN HARRIS CARTER, *et al.*,

Petitioners,

vs.

STANLEY MROZOWSKI, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The facts giving rise to this case date back to the 1989-90 decision of the Dauphin County Mental Health and Mental Retardation Program to not renew its contract with the Rosalie G. Handler Center (the "Handler Center"). Dauphin County is a political subdivision of Pennsylvania. Under this contract, the Handler Center was providing The Dauphin County Mental Health and Mental Retardation Program with case management, partial hospitalization, and out-patient services. During this time, Petitioners all worked at the Handler Center. Through numerous legal actions, Petitioners attempted to force a renewal of this contract. These attempts were all unsuccessful and the contract was awarded to another entity.

Thereafter, Petitioners initiated the present action on June 3, 1992, by the filing of a Complaint in the Court of Common Pleas of Dauphin County, Pennsylvania. An Amended Complaint (the first Amended Complaint) was then filed on June 4, 1992. The first Amended Complaint merely removed one of the named Plaintiffs from the original Complaint. On July 7, 1992 Preliminary Objections were filed to the first Amended Complaint on behalf of all Defendants. Briefs by the parties were then filed and oral argument was held on December 2, 1992, before the Honorable Judges Morgan, Turgeon, and Kleinfelter. On September 20, 1993 an Order and Opinion was issued by the Honorable Joseph H. Kleinfelter which sustained the Respondents' demurrers to all counts in the Complaint, while also granting the Petitioners leave to file an amended Complaint for purposes of correcting the deficiencies noted by the court. A copy of said September 20, 1993 Opinion and Order is attached to Respondents' Brief in Opposition filed by Dauphin County MH/MR Case Management Unit, Dauphin County Counseling Center, Gantt, Bard, Minnix, Loomis, Resinger, Dunlap and Urban.

On October 12, 1993, the Petitioners filed a second Amended Complaint. On October 29, 1993, the Respondents filed additional Preliminary Objections to the second Amended Complaint. Again, briefs were submitted and oral argument was presented before the Honorable Judges Turgeon, Kleinfelter, and Hoover. On May 10, 1994 an Order and Opinion was issued by the Honorable Todd A. Hoover in which the court held that the Petitioners had failed to correct the deficiencies noted in the September 20, 1993 Opinion and had failed to state a cause of action against any of the Respondents on any count. Accordingly, the court granted the Respondents' additional demurrers and dismissed the second Amended Complaint with prejudice. A copy of the May 10, 1994 Opinion and Order is attached to the Petition at Appendix C.

Petitioners then appealed this dismissal to Pennsylvania's Commonwealth Court. On June 2, 1995 the Commonwealth Court issued an Order and Opinion affirming the dismissal by the Court of Common Pleas. *See* Opinion and Order of the Commonwealth Court at Appendix B of the Petition For Writ of Certiorari. Next, Petitioners filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania, which denied the petition on November 16, 1995. *See* Order of the Supreme Court of Pennsylvania at Appendix A of the Petition For Writ of Certiorari. Thereafter, Petitioners filed the instant Petition For Writ of Certiorari with this Court on February 14, 1996.

REASONS FOR DENYING THE WRIT

I.

THE COURTS OF PENNSYLVANIA MAY PROPERLY APPLY THEIR OWN NEUTRAL AND NON-DISCRIMINATORY PLEADING RULES TO ACTIONS BROUGHT IN STATE COURT BASED UPON 42 U.S.C. § 1983.

Petitioners urge this Court to hold that Pennsylvania's pleading rules are preempted under the Supremacy Clause in 42 U.S.C. § 1983 cases brought in Pennsylvania state courts. In effect, Petitioners propose that the state courts of Pennsylvania[1] be required to abandon their fact pleading standard and adopt the federal notice pleading standards of Federal Rule of Civil Procedure. Such a proposition is contrary to the decisions of this Court and violative of the basic tenants of our federalist form of government. Therefore, this Court should deny the Petition for Writ of Certiorari.

As with many actions grounded upon federal law, the courts of the Commonwealth of Pennsylvania have concurrent jurisdiction over claims based upon 42 U.S.C. § 1983. It has long been established that where an action founded upon federal law is brought in a state court, the law of the state controls in matters of practice and procedure, unless a federal statute provides otherwise. *See Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123,

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1. Although the narrow issue focuses on Pennsylvania's fact pleading rules and procedure, Petitioners theory, if accepted, would undoubtedly call into question all state procedural rules which are not in total harmony with the Federal Rules of Civil Procedure. Further, such a theory would result in state courts applying different procedural requirements to different counts of the same complaint, dependent on whether the count was based upon federal or state law.

108 S. Ct. 2302 (1988). Moreover, in such cases, the general rule is that the states are free to adopt such practices and procedures as they deem fit. As this Court recently explained:

> The general rule is "bottomed deeply in belief in the importance of state control of state procedure, is that federal law takes the state courts as it finds them." The states thus have great latitude to establish the structure and jurisdiction of their courts. In addition, States may apply their own neutral rules to federal claims, unless those rules are pre-empted by federal law. These principles are fundamental to a system of federalism in which the state courts share responsibility for the application and enforcement of federal law.

Howlett v. Rose, 496 U.S. 356, 372, 110 L. Ed. 2d 332, 351, 110 S. Ct. 2430 (1990) (citations omitted). Of course, this general rule is not without limitation: "Federal law takes state courts as it finds them only insofar as those courts employ rules that do not impose unnecessary burdens upon rights of recovery authorized by federal law." *Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988) (quoting, *Brown v. Western R. Co. of Alabama*, 338 U.S. at 298-299). To this end, state statutes that burden federal substantive rights of recovery, that are defendant specific, or discriminate against federal rights will be preempted. *See generally*, *Howlett v. Rose*, 496 U.S. 356, 372, 110 L. Ed. 2d 332, 110 S. Ct. 2430 (1990); *Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988). However, Pennsylvania's liberal fact pleading standards are neutral and add no additional conditions to recovery. As such, Pennsylvania's pleading rules clearly fall within the unassailable right of Pennsylvania to establish rules of procedure governing litigation in its own courts.

Pleadings in Pennsylvania, as in other fact pleading states, serve not only to put opponents on notice, but also to form the issues in the action and make possible, at a preliminary stage, the disposition of meritless or frivolous claims. Goodrich-Amram 2d § 1019:2. Pennsylvania Rule of Civil Procedure 1019 sets forth the necessary requirements of a complaint. This rule requires, *inter alia*, that "The *material facts* on which a cause of action is based shall be stated in concise and summary form." Pa. R. C. P. 1019(a)(emphasis supplied).[2] Material facts are only those which are essential to show the liability which is sought to be enforced. *General State Authority v. Sutter Corp.*, 44 Cmwlth Ct. 156, 403 A.2d 1022 (1979). Accordingly, a complaint is required to be sufficiently specific in the presentation of fact so that a defendant is informed with accuracy of the basis upon which recovery is sought. *Philadelphia County Intermediate Unit v. Department of Education*, 60 Pa. Cmwlth 546, 432 A.2d 1121 (1981). While this rule does require fact pleading rather than notice pleading, meticulous specificity is not required. *Local No. 163, International Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 417 Pa. 120, 207 A.2d 776 (1956). Moreover, Pennsylvania Rules of Civil Procedure are always to be liberally construed. Pa. R. C. P. 126. Nevertheless, where a complaint fails to meet these pleading requirements Pa. R. C. P. 1028(a)(4) provides defendants with redress by preliminary objection in the nature of a demurrer.

Pennsylvania courts, in considering preliminary objections to a complaint in the nature of a demurrer, again apply a liberal standard. In ruling on demurrers, the courts, though not admitting conclusions of law or statements of opinions, admit all

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2. If a claimant lacks sufficient facts to set forth a valid complaint, the action may be commenced by writ and the information obtained through discovery. Goodrich-Amram 2d §1019(a)10.

well pleaded material facts for the purpose of determining whether such facts, if proven at trial, would sustain the claims made. *Mazzagatti v. Everingham by Everingham*, 512 Pa. 266, 516 A.2d 672 (1986). Likewise, Pennsylvania courts, also accept all inferences fairly deductible from such facts *in favor of the pleader. Wicks v. Milizococ Builders Inc.*, 503 Pa. 614, 623, 470 A.2d 86, 91 (1983) (emphasis added.).

Accordingly, in the present dispute, the trial judge, resolving any doubt in favor of the Petitioners, nevertheless, found that their Complaint failed to set forth the necessary facts to support any of the fifteen counts contained therein. In so holding, however, the trial court, in its September 20,1993 Opinion, provided Petitioners with specific and extensive guidance on what additional facts were needed to remedy the defects. Despite this direction, the Petitioners added mere legal rhetoric, leading the trial court to find that their Second Amended Complaint still lacked the factual specificity required under Pennsylvania pleading rules. Based upon the Petitioners failure to conform the Second Amended Complaint in accordance with the September 20, 1993 Order, the trial court dismissed the Complaint with prejudice. This decision was affirmed on appeal by the Pennsylvania Commonwealth court by Order dated June 2, 1995.

Despite the liberal standard of Pennsylvania's pleading rules and procedures, Petitioners argue that these rules are preempted in 1983 actions under the Supremacy Clause. In support this contention Petitioners rely heavily on the holding in *Brown v. Western Railway of Alabama*, 338 U.S. 294, 94 L. Ed. 100, 70 S. Ct. 105 (1949). In *Brown*, the plaintiff filed a complaint in Georgia state court asserting rights under the Federal Employer's Liability Act, to which the defendant filed a general demurrer. In reviewing the defendant's demurrer, the Georgia court, following local practice, construed the pleadings most strongly against the pleader. *Brown*, 338 U.S. at 295. In

reversing the Georgia court, this Court first reiterated the general rule that state courts are free to follow their own rules of procedure and practice. However, the Court reasoned that local must fall where they act to detract from "substantive" rights. *Id.* at 296. The Court then concluded that the Georgia practice of construing pleadings against the plaintiff "operated to detract from substantive rights' granted by Congress in FELA cases. *Id.* The present situation is clearly distinguishable from *Brown* as the Pennsylvania standards of pleading cannot reasonably be characterized as infringing on Petitioners' federally protected rights.

Unlike the pleading practices addressed in *Brown*, which construed the complaint "most strongly against the pleader", Pennsylvania practice, as noted above, is exactly the opposite. Pennsylvania neither requires meticulous pleading nor construes pleadings against the plaintiff. Pennsylvania requires only that material facts be plead and construes the complaint, and all reasonable inferences therefrom, *in favor of the pleader*. Furthermore, Petitioners, unlike those in *Brown*, were provided *two* opportunities to amend their Complaint so as to add sufficient factual allegations and were also provided with specific and extensive directives on what facts were required to cure the Complaint. Clearly Pennsylvania's pleading rules and practice are starkly distinguishable from the draconian pleading standard applied by the Georgia court in *Brown*. The practice followed by the trial court, consistent with Pennsylvania fact pleading practice, merely provides adequate processes by which frivolous or unmeritorious claims may be quickly resoled. As such, it cannot realistically be argued that Pennsylvania procedure or practice infringed upon any of the Petitioners' substantive rights.

Likewise, Petitioners' reliance on *Felder* is also misplaced. In *Felder*, this Court held that a Wisconsin state notice of claim statute was preempted by federal law. The notice statute

provided that before a suit could be brought in state court against a governmental entity or an officer thereof, the plaintiff must notify the governmental defendant of the circumstances giving rise to the claim, the amount of the claim and his or her intent to hold the named defendant liable. The statute further required, that in order to afford the defendant an opportunity to consider the requested relief, the claimant must refrain from filing suit for 120 days after providing such notice and that failure to comply with these requirements constituted grounds for dismissal of the action. Finally, the statute required the claimant to bring their action within six months of receiving notice that their claim had been disallowed. *Felder*, 487 U.S. at 134.

In analyzing whether the Wisconsin statute was preempted, this Court again reiterated the general rule that state procedural rules apply to actions brought in state court: "No one disputes the general and unassailable proposition relied upon by the Wisconsin Supreme Court below that States may establish the rules of procedure governing litigation in their own courts." *Id.* at 138. Nevertheless, after a thorough examination of the statute, this Court found it failing in several respects. This Court found that the statute undermined the plaintiff's federal right by conditioning the right of recovery against governmental defendants on giving such defendants notice so as to minimize governmental liability, a rule manifestly inconsistent with the purpose of § 1983 actions. This Court also determined that the statute was not a neutral law of procedure, but discriminated against the plaintiff's federal right, as state tort victims could bring similar state intentional tort actions within two years, while the civil rights claimant was permitted only four months. In sum, this Court in *Felder* found that the statute was not a neutral law of procedure but was defendant specific, outcome-determinative and burdened plaintiff's substantive federal right. *Id.* at 141.

Unlike *Felder*, the Pennsylvania pleading rules and practice

are neutral, nondiscriminatory and are applicable to all parties, whether governmental or private, and to all actions, whether founded upon federal or state law. Further, Pennsylvania's pleading rules require only that the plaintiff set forth the material facts required to establish the causes of action and do not add any condition or burden upon claimants, as the Wisconsin notice statute did. Accordingly, the *Felder* decision lends no support to Petitioners proposition that Pennsylvania's pleading rules are preempted. Indeed, Pennsylvania's neutral rules of practice and procedure are the very types of practice rules which the Court in *Felder* acknowledged to be within the unassailable right of state courts to apply in actions brought within their courts.

Finally, despite numerous citations thereto, Petitioners proposition has no support in this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, __U.S.__, 122 L. Ed. 2d 517, 113 S. Ct. 1160 (1993). In *Leatherman*, this Court rejected the practice adopted by the federal courts in most Circuits of applying a "heightened pleading requirement" to complaints for municipality liability under 42 U.S.C. § 1983. This Court concluded that such actions were controlled by Fed. R. Civ. P. 8(a), requiring only notice. The issue addressed in *Leatherman* involved the application and interpretation of the Federal Rules of Civil Procedure. Stated by this Court, the issue was "whether a federal court could apply a "heightened pleading standard" — more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure — in civil rights cases alleging municipal liability . . . under 42 U.S.C. § 1983." *Leatherman*, 122 L. Ed. 2d at 522. Concluding that the federal courts are constrained by the Federal Rules of Civil Procedure, as codified, this Court rejected application of a different pleading standard in such cases, until that time that the federal rules are amended.

As Petitioners chose to file their action in state court, both

the Federal Rules of Civil Procedure and *Leatherman* are irrelevant. Indeed, to the extent that *Leatherman* does provide any guidance in this matter, it would clearly seem to direct a position contra to Petitioners' theory in this case. In *Leatherman*, albeit in dicta, this Court stated:

> Perhaps if [the Federal Civil Procedure] Rules 8 and 9 were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, not by judicial interpretation. In the absence of such a amendment, federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later.

122 L. Ed. 2d at 524.

In so reasoning, this Court impliedly endorsed an amendment to the federal pleading rules. Moreover, this illustrates that Pennsylvania's pleading rules, requiring somewhat more specificity than that required under federal notice pleading, do not act to burden a "substantive" federal right. Indeed, one of the primary rationales supporting Pennsylvania's fact pleading standards, as noted supra, is to permit the courts to begin to weed out such unmeritorious claims. Merely because Pennsylvania has adopted a fact pleading standard in which to accomplish this goal cannot, therefore, be characterized as burdening or detracting from a federal substantive right.

In conclusion, Petitioners' proposition that Pennsylvania

must abandon its standard pleading requirements in cases based upon 42 U.S.C. § 1983 must fail. This Court has consistently held that states are free to implement neutral, nondiscriminatory rules of procedure applicable to cases brought in their courts. The Pennsylvania pleading rules are equally applicable to all actions filed in Pennsylvania state courts, whether the action is based upon state or federal law, and all parties add no additional requirements on recovery. As such, Pennsylvania's pleading rules cannot be held to burden or detract from Petitioners' substantive rights afforded under 42 U.S.C. § 1983, and, therefore, are not preempted and Petitioners' Petition for Writ should be denied.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Honorable Court deny the Petition For Writ of Certiorari.

Respectfully submitted,

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